United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

ORIGINAL

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

74-1847

UNITED STATES OF AMERICA,

Appellee,

-against-

JOSEPH NOVOA,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

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Appellant
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AUG 21 1974

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7/2/74

D. C. Form No. 100
CRIMINAL DOCKET

JUDGE WYATT

74 CRIM. 229

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Rudolph W. Giuliani, AUS
JOSEPH, NOVOA- all cts.	264-6139
PETER DALY- all cts.	
FRANK RAMOS-4, 6-10	
DEMETRIOS PAPADAKIS-4,6,7,a/k/a Jimmy Pappas,a/k/a "Jimmy the Greek"	For Defendant:
JOAQUIN NIEVES-4,8.	
ELISSA POSSAS-4,6,7.	

ABSTRACT OF COSTS (07)	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED		DISBU
Fine,							
Clerk, $13- 5-4							
Marshal,							
Attorney,							
~~Commissioner's Court~~, 18:371,21:173,4 Conspr. to ~~Witness~~ viol. Fed. Narcotic Laws.(Cts.1&4)							
18:3,21:173,4 Acessory to the fact.(Ct.2)							
18:1510 Obstruction of crim. invest.(Ct.3)							
21:173,4 Unlaw. sale,receive,& conceal. of Heroin & Cocaine.				(Ten Counts)			

DATE	PROCEEDINGS
3-8-74	Filed indictment. B/Ws' ordered. Pollack,J. B/Ws issued.
3-12-74	Deft. Novoa(present) Matter adj'd to 3-25-74 at 10 AM. Bail set at $10,000. P.R.B. unsecured. Pollack,J.
3-12-74	Filed copy of P.R.B. bond unsecured in the amt. ($10,000.) acknowledge by Clerk on 3/12/74.
3-18-74	J. Novoa(atty. present) Pleads not guilty. Bail fixed at $25,000. P.R. secured by $2,500. cash.
	Defts. Possas(No appearance by defts. Court directs entry of not guil
	Daly(Case assigned to Judge Wyatt for all purposes. Motions
	Papadakis and Ramos.(ret. in 10 days. Motley,J.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDA
3-18-74	JOSEPH NOVOA-Filed notice of appearance of James L.R. Costello 170 B'way N.Y.C. 10038 BA 7-4233		
3-21-74	FRANK RAMOS-Filed notice of appearance of Rubin, Gold & Geller 299 B'way N.Y.C. 233-3330		
3-22-74	JOAQUIN NIEVES-Filed remand ----March 12, 1974 Deft. released from the custody of the U.S. Marshal. Bond posted as directed by Court.		
3-29-74	Pre-trial conference held. Trial May 13, 1974. Motion by April 12, 1974---Wyatt, J.		
4-1-74	JOAQUIN NIEVES-(atty Robert Schwartz present) Court enters plea of not.guilty.---Wyatt, J.		
4-1-74	DEMETRIOS PAPADAKIS= Filed Affdvt for Writ of Habeas Corpus via Joseph Jaffe US Atty, Writ issued - Ret 4-3-74.		
4-3-74	JOAQUIN NIEVES= Filed notice of appearance of ROBERT B. SCHWARTZ c/o A.J. Krieger, 401 Bway, NYC Tel#9255937.		
4-5-74	DEMETRIOS PAPADAKIS= Deft present, producedin court on Writ. Joseph I. Stone assigned as Atty. C.J.A. Writ. adj. to 5-13-74, Deft pleads "NOT GUILTY" --- WYATT, J.		
4-8-74	DEMETRIOS PAPADAKIS= Filed Deft's CJA Form #23 -- Financial Affidavit.		
4-8-74	" " " " = Filed CJA 20, Copy #5, appointing Joseph I. Stove, 277 Broadway, NYC 10007 Tel#RE 2-2270.		
4-17-74	JOAQUIN NIEVES= Filed Deft's Notice of Motion and Affidavits requesting the dismissal of the indictment.		
4-18-74	JOSEPH NOVOA= Filed Deft's Demand for a Bill of Particulars.		
4-22-74	JOSEPH NOVOA - Filed Deft's Memorandum of Law.		
4-22-74	JOSEPH NOVOA - Filed Defts's Notice of Motion to consolidate support papers. ret		

DATE	PROCEEDINGS
4-24-74	JOAQUIN NIEVES - Hearing held as co Deft. Nieves atty present with interprete Norma Seltzer. Wyatt J.-
4-25-74	JOAQUIN NIEVES - Filed Memo. End. on motion dated 4/17/74. Motion denied. - So Ordered Wyatt J. (mailed notice)
4-26-74	JOSEPH NOVOA= Filed Pltf's Affdvt of Michael B. Mukasey in responce to Deft vari pre-trial motions, such as Bill of Particulars, pre-trial discovery, ect.
4-26-74	JOSEPH NOVOA= Filed Pltff's Memorandum of Law in opposition to Defts motions Bill of Particulars, Discovery & Inspection, ect.
4-29-74	JOSEPH NOVOA - Filed Memo. End. on motion dated 4/22/74. Motion in all respe denied. Wyatt J. (mailed notice)
May 6.74	JOAQUIN NIEVES,- Filed Notice of Motion. Re: Dismiss Indictment. ret. Sine Di
May 6.74	JOAQUIN NIEVES & FRANK RAMOS - Filed the following papers rec's from Magistr Raby (Mag.#74-308) Docket Sheets Entry, Warrant issued 3-8-74, Disposition Sheeet, Notice of Appearance, (2) Appearance Bond(F.Ramos)(1)$10,000.00 PRB without security, co-signed by wife on 3/13/74, Final Commitment (J.Nieves)(
5-10-74	Filed Affidavit by Lawrence S. Feld U.S. Atty. in opposition to motions serv by deft. Joaquin Nieves.
5-10-74	JOAQUIN NIEVES - Filed Memo. End. on motion dated 5/6/74. Motion is denied i all respects except that the 1955 conviction will be excluded if deft. testifies. Wyatt J. (mailed notice)
5-13-74	Filed Pltffs. Affidavit that writ of habeas corpus be issued to Nicholas Lamattina at Federal Prison Camp, Eglin Air Force Base, Writ issued Ret. 5/14/74
5-13-74	Filed Pltffs Affidavit that writ of habeas corpus be issued toNicholas De Stefano at Federal Prison Camp, Eglin Air Force Base, Writ Issued Ret. 5/14/74.
5-13-74	JOSEPH NOVA - Filed Order that the will show that counsel did not appear for motion & deft. was in no way at fault. Wyatt J. (mailed notice)
5-14-74	Filed Pltffs. Notice of Motion for an order adjourning the trial until 9/3/ 5/20/74, etc. & Affidavit in support.
5-15-74	JOSEPH NOVOA, ET AL. - Trial begun as to defts. Joseph Novoa, Demetrios Papad & Joaquin Nieves(Inte preter- Italian S. Bastianello) (Attys. Present with a jury. Bail of Deft. Novoa reduced to $25,000 P.R.B. (no cash).
5-16-74	Trial cont'd.
5-17-74	Trial cont'd.
5-20-74	Trial cont'd.
5-21-74	Trial cont'd.
5-22-74	Trial cont'd. Gov't. rests - NOVA & PAPADAKIS defts. move to dismiss count 4. Decision r
5-23-74	Trial cont'd.

Continued on Page #4

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DATE	PROCEEDINGS
5-31-74	NICHOLAS LAMATTINA - Filed Writ of Habeas Corpus directed to Warden - Federal Prisor Camp Eglin Air Force Base, Fla. Writ Satisfied. Cannella J. 5/23/74.
5-31-74	NICHOLAS De STEFANO - Filed Writ of Habeas Corpus directed to Warden - Federal Pris. Camp Eglin Air Force Base, Fla. Writ Satisfied 5/23/74.
5-24-74	Trial cont'd. Defts NOVA & PAPADAKIS rest. Gov't motion to sever Counts 2 & 3 as to deft. NOVA - "GRANTED". Deft's NIEVES and PAPADAKIS motion to DISMISS count 4 -"GRANTED".
5-28-74	Trial cont'd. Deft. NIEVES rest. All sides rest. Summations.
5-29-74	Trial cont'd. Court charges the jury. Jury deliberating.
5-30-74	Jury deliberations cont'd. Partial Verdict. Deft NOVOA. GUILTY on Count #1. Deft. PAPADAKIS. NOT GUILTY on Count #6. Deft. NIEVES . NOT GUILTY on Count #8., discharged.
5-31-74	Jury dleiberations cont'd.
6-3-74	Jury deliberations cont'd. Deft. PAPADAKIS. GUILTY on Count #7. Sentence June 14, 1 @ 2:30 PM - Pre-Sentence investigation ordered. Deft. NOVOA. GUILTY on each of Counts #4, 5, 6, 7, 8, 9, & 10. -- Court to fix sent date on June 5, 1974 @ 10:00 A.M. --- WYATT,J.
6-5-74	JOSEPH NOVOA- Deft. sentence July 2, 1974 @ 10:00 A.M., Room 102. Deft. continued on present Bail until 5:00 PM today to make Bail in the amount of $50,000. P.R.B., SIGNED by Deft; Deft's Wife, Deft's Mother & Deft's Brothers, & Deft's Mother In Law SECURED BY THE DEED OF THE DEFT'S HOUSE. Condition of Bail that the Deft. SIGN in ROOM 345 @ 6:30 PM on TUESDAYS and THURSDAYS of every week --WYATT, J.
6-5-74	JOSEPH NOVOA- Filed unsecured P.R.B. in the amount of $50,000 acknowledged by Clerk
6/10/74	Filed transcript of record of proceeding of May 15,16,17, 20 1974
6/10/74	Filed transcript of record of proceedings of May 21,22,23,24,31, 1974
6/10/74	Filed transcript of record of proceedings of May 29, 30, 31, 1974 & June 3 1974
5-31-74	DEMETRIOS PAPADAKIS-Filed CJA 21 appointing Court Reporters-Wyatt,J.- 5-21-74.
6-14-74	DEMETRIOS PAPADKIS-Filed JUDGMENT and COMMITMENT (atty present) Deft. is committed to the Atty Gen'l for imprisonment for a period of FIVE (5) YEARS, to run concurrent with sentences now being served under indictments 71 cr. 614 and 71 cr.972....Wyatt, Issued Commitment 6-17-74.
6-14-74	DEMETRIOS PAPADAKIS-Filed notice of appeal from Judgment dated 6-14-74. Mailed copie to deft. at Federal House of Detention & U.S. Atty.
6-18-74	DEMETRIOS PAPADAKIS-Filed writ of habeas corpus with Marshal's return-6-14-74 Writ Satisfied---Knapp, J.
6-20-74	DEMETRIOS PAPADAKIS-Filed commitment & entered return. Deft. delivered to Warden, Federa detention Headquarters, 427 West Street, N.Y.C. on June 14, 1974.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Dr Jud
7-2-74	JOSEPH NOVOA-Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on count 1. TEN (10) YEARS on each of counts 4 thru 10, to run concurrently with each other. Sentence imposed on count 1, to run concurrently with sentence imposed on counts 4 thru 10.....Wyatt,J.	
7-2-74	JOSEPH NOVOA-Deft. remanded....Wyatt,J.	
7-2-74	JOSEPH NOVOA-Filed deft's. consent to change attorney. So Ordered....Wyatt,J.	
7-2-74	JOSEPH NOVOA-Filed Notice of Appeal from the Judgment of Conviction as entered on July 2, 1974. (Mailed notice to Joseph Novoa, 1738 East 33rd Street, Brooklyn, New York and U S. Attorney.)	

F

DOCKET ENTRIES

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

UNITED STATES OF AMERICA

v.

JOSEPH NOVOA, PETER DALY,
FRANK RAMOS, DEMETRIOS PAPADAKIS,
a/k/a "Jimmy Pappas", a/k/a
"Jimmy the Greek", JOAQUIN NIEVES,
and ELISSA POSSAS,

Defendants.

- -x

The Grand Jury charges:

INTRODUCTION

1. At all times relevant herein the defendants PETER DALY, and JOSEPH NOVOA, were members of the New York City Police Department, assigned to the Narcotics Bureau, Special Investigation Unit (SIU).

2. The Bureau of Narcotics and Dangerous Drugs, known since July 1, 1973, as the Drug Enforcement Administration, at all times relevant herein was an agency of the United States Department of Justice charged with investigating violations of the criminal laws of the United States relating to narcotics.

3. The Bureau of Customs, at all times relevant herein, was an agency of the United States Treasury Department charged with investigating violations of the criminal laws of the United States relating to narcotics,

passport and visa violations.

4. The illegal importation into the United States of narcotic drugs and the receipt, concealment, purchase and sale, and the facilitation of the transportation, concealment, purchase and sale of narcotic drugs were, at all times relevant herein, crimes under the laws of the United States.

COUNT ONE

The Grand Jury charges:

1. From in or about April 14, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere JOSEPH NOVOA and PETER DALY, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the United States Department of Justice, the Bureau of Narcotics and Dangerous Drugs, and the Bureau of Customs in investigating and prosecuting violations of the narcotics laws of the United States and to violate Sections 173 and 174 of Title 21, Unites States Code, and Sections 3 and 1510 of

Title 18, United States Code.

2. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree to arrest Emilio Diaz Gonzales, a/k/a "Alfred Picardo", Elena Risso a/k/a "Yolando Sarmiento", Jose Luis Mulas and Jorge Rodrigues Araya (hereinafter "the offenders") for unlawful possession of narcotics, and in connection with said arrests, to seize approximately $1,200 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and to divide such currency among the defendants and others without reporting said seizure to the New York City Police Department or to Federal law enforcement authorities and to retain possession of approximately five (5) kilograms of heroin and cocaine seized as part of a much larger quantity of contraband narcotics seized from Apartment 4-F, 210 West 19th Street, New York, New York, where said narcotics were being secreted, thereby depriving the United States Government of evidence of violations of the narcotics laws of the United States.

3. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would facilitate the transportation, concealment and sale of quantities of narcotic

drugs, after the said narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

4. It was further a part of said conspiracy that the defendants and their co-conspirators, knowing that violations of the United States narcotics laws had been committed, would relieve, comfort and assist the offenders in order to hinder and prevent their apprehension, trial and punishment.

5. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would endeavor by means of bribery, misrepresentation, intimidation, force and threats thereof to obstruct, delay and prevent the communication of information relating to violations of the United States narcotics and immigration laws by other persons to criminal investigators.

6. It was further a part of said conspiracy that the defendants and their co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

OVERT ACTS

In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On or about April 14, 1970 the defendants PETER DALY and JOSEPH NOVOA, and others, followed the offenders from New York, New York to Fort Lee, New Jersey.

2. On or about April 14, 1970 the defendants PETER DALY and JOSEPH NOVOA and others, unlawfully caused the offenders to return from Fort Lee, New Jersey to New York, New York.

3. On or about April 14, 1970, the defendants PETER DALY and JOSEPH NOVOA, and others took approximately twelve hundred dollars ($1200.00) from the offenders while in the Sixth Precinct Station House, New York, New York.

4. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVOA, an others conducted a search of Apartment 4-F, 210 West 19th Street.

5. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVOA and others seized a large quantity of narcotic drugs in excess of one-hundred kilograms, the exact kind and nature to the Grand Jury unknown, from Apartment 4-F, 210 West 19th Street, Manhattan.

6. On or about April 15, 1970, the defendant

PETER DALY placed a brown valise containing approximately five (5) kilograms of heroin and cocaine in a motor vehicle in the vicinity of 210 West 19th Street, New York, New York.

7. In and around late April or May 1970, the defendant PETER DALY had conversations with members of the SIU in which he stated he had obtained $5,000 from the apartment of the aforesaid offender, "Yolando Sarmiento", located in Brooklyn, New York.

8. In and around late April, May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations among themselves and with members of the SIU in which they discussed accepting $150,000 to corruptly dispose of the criminal charges pending against the offenders.

9. In and around May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations in which they agreed among themselves to sell and transfer the aforementioned five kilograms of heroin and cocaine.

10. In or about May, and June 1970, the defendant FRANK RAMOS and others met with the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS.

11. In and around May and June, 1970 the defendant FRANK RAMOS met with the defendant JOAQUIN NIEVES.

12. During the summer of 1970, the defendants PETER DALY and JOSEPH NOVOA met with others and divided among themselves approximately $54,000, from the transfer and sale of the approximately five (5) kilograms of heroin and cocaine.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

In or about April, May and June, 1970, in the Southern District of New York and elsewhere, PETER DALY and JOSEPH NOVOA, the defendants, knowing that an offense against the United States had been committed, to wit, a violation of the narcotics laws of the United States, unlawfully, wilfully and knowingly did relieve, comfort and assist the offenders named in Count One and others in order to hinder and prevent said offenders' trial and punishment, in that among other things the defendants deliberately withheld and failed to report and turn in to any authorized law enforcement agency, and instead retained and divided among themselves approximately $1,200 in United States currency and approximately five (5) kilograms of heroin and cocaine which currency and heroin and cocaine constituted evidence of violations of the narcotics laws of the United States.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 3.)

COUNT THREE

The Grand Jury further charges:

In or about April, May and June, 1970, in the Southern District of New York, PETER DALY and JOSEPH NOVOA, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did endeavor by means of bribery, misrepresentation, intimidation, and force and threats thereof to obstruct, delay and prevent the communication of information relating to violations of Sections 173 and 174 of Title 21, United States Code, to criminal investigators in that, among other things, the defendants deliberately withheld and failed to turn in to any authorized law enforcement agency, and instead retained and devided among themselves approximately $1,200 in United States currency and sold approximately five (5) kilograms of heroin and cocaine which currency and heroin and cocaine constituted evidence of violations of the narcotics laws of the United States.

(Title 18, United States Code, Sections 1510 and 2.)

COUNT FOUR

The Grand Jury further charges:

1. In and about April, 1970, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, PETER DALY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", JOAQUIN NIEVES, and ELISSA POSSAS, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

2. It was part of said conspiracy that the defendants and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportaion, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

3. Among the means whereby the defendants accomplished the objectives of this conspiracy were the following:

(a) The defendants PETER DALY and JOSEPH NOVOA and others, under the guise of their official capacity as police officers, seized large quantities of heroin and cocaine and illegally retained in their possession approximately five (5) kilograms of heroin and cocaine.

(b) The defendants PETER DALY and JOSEPH NOVA and others concealed and then transferred, and caused to be transferred, the five (5) kilograms of heroin and cocaine to an intermediary.

(c) The intermediary with the assistance of the defendant FRANK RAMOS sold the heroin and cocaine to the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", JOAQUIN NIEVES, ELISSA POSSAS and others.

OVERT ACTS

In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On or about April 15, 1970, the defendants PETER DALY and JOSEPH NOVOA and others seized over 100

kilograms of heroin and cocaine, the exact kind and nature to the Grand Jury unknown, from Apartment 4-F, 210 West 19th Street, New York, New York.

2. On or about April 15, 1970, the defendant PETER DALY, in the vicinity of 210 West 19th Street, New York, New York, placed a brown valise containing approximately five (5) kilograms of heroin and cocaine in a motor vehicle.

3. In or about May and June 1970, the defendants PETER DALY and JOSEPH NOVOA and others had conversations in which they agreed among themselves and with others to sell and transfer the above mentioned narcotic drugs.

4. In or about May and June, 1970, the defendants FRANK RAMOS, and others, met with the defendants DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS.

5. In or about July, 1970 the defendant FRANK RAMOS and others met with the defendant JOAQUIN NIEVES.

6. During the summer of 1970, the defendants PETER DALY and JOSEPH NOVOA met in New York, New York with others to the Grand Jury known and unknown and divided among themselves a total of approximately $54,000, as the illegal proceeds from the sale of the above-mentioned narcotics.

(Title 21, United States Code, Sections 173 and 174).

COUNT FIVE

The Grand Jury further charges:

On or about April 15, 1970 in the Southern District of New York, PETER DALY and JOSEPH NOVOA, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately five kilograms of heroin hydrochloride and cocaine hydrochloride, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;

Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In or about May and June 1970, in the Southern District of New York PETER DALEY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell, and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit,

approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174;

Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "Jimmy Pappas", a/k/a "Jimmy the Greek", and ELISSA POSSAS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, FRANK RAMOS and JOAQUIN NIEVES, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 2.)

COUNT NINE

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, and FRANK RAMOS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law,

knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Sections 2.)

COUNT TEN

The Grand Jury further charges:

In or about May and June, 1970, in the Southern District of New York, PETER DALY, JOSEPH NOVOA, and FRANK RAMOS, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Sections 2.)

s/ John Hayden
FOREMAN

s/ Paul J. Curran
PAUL J. CURRAN
United States Attorney

JUDGE WYATT

Form No. 23 Rev. Criminal

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JOSEPH NOVOA, PETER DALY
FRANK RAMOS, DEMETRIOS PAPADAKIS,
a/k/a "Jimmy Pappas", a/k/a
"Jimmy the Greek", JOAQUIN NIEVES,
and ELISSA POSSAS,

Defendants.

INDICTMENT

74 Cr.

18 U.S.C. § 371, 21 U.S.C. §§ 173 and 174;
18, U.S.C. §§ 1510 and 2.)

PAUL J. CURRAN
United States Attorney.

TRUE BILL

Foreman.

U.S. DISTRICT COURT
FILED
MAR 8 1974
S. D. OF N.Y.

JUDGE WYATT

3/3/74 B/W ordered as to all defts. Pollack, J.

3/12/74 - DEFT. NIEVES PRESENT. MOTION ADJ. TO MAR. 25TH AT 10:00 A.M. BAIL SET AT 10,000 PRB-UNSECURED.

POLLACK, J.

3/18/74 - Deft. Joseph Novoa present Catt. J. Cosello present Enter Plea of Not Guilty. Case assigned to J. Wyatt. 10 days for Motion. Bail fixed at $25,000 PRB with 2,500 cash

3/18/74 - Deft. Elissa Possas Not Present Court Enters A Plea of Not Guilty Assigned to J. Wyatt

3/18/74 - Deft Peter Daly Not Present. Court Enters A Plea of Not Guilty - Assigned to J. Wyatt

3/18/74 - Demetrios Papadakis Not Present Court Enters A Plea of Not Guilty. Assigned to J. Wyatt.

3/18/74 Deft. Frank Ramos Not Present Court Enters A Plea of Not Guilty. Assigned to J. Wyatt

MOTLEY, J.

MAR 29 1974 Pre-Trial conf. held. Trial [illegible]

Trial [illegible]

, 1974 Deft. Nieves Counterfeiters plea of not Guilty
Atty present - Robert Schwartz. WM

1974 Deft. Demetrios Papadakis present, produced in court on writ
Joseph L. Stern assigned as atty. C.J.A. writ adj. to May 13 1974.
Deft pleads "not Guilty".
adj. pth, J.
WM

974 Hearing held as to Deft Nieves. Atty present with Interpreter Roma Seltzer
adj. pth, J.

1974 Pre-Trial confer. held. Trial May. 15, 1974 10:00 A.M.
adj. pth, J.

15 1974 Trial begun, as to Defts Joseph Novoa, Demetrios Papadakis & Joaquin Nieves (Interpreter Halina D. Bastianello) atty present with a jury. Bail of Deft. Novoa reduced to $25000 P.R.B. (no cash).

16 1974 Trial cont'd.

17 1974 Trial cont'd.

20 1974 Trial cont'd.

21 1974 Trial cont'd.

22 1974 Trial cont'd. - Govt Rests. - Defts Nieves + Papadakis move to dismiss ct. 4 "Decision Reserved"

23 1974 Trial cont'd.

Y 24 1974 Trial cont'd. - Defts Novoa + Papadakis Rest. Govt. motion to sever counts 2 and 3 as to deft. Novoa. "Granted."
Defts Nieves + Papadakis motion to dismiss count 4, "Granted."

AY 28 1974 Trial cont'd. Deft. Nieves Rest. all Sides Rest.
Summations

AY 29 1974 Trial cont'd. Court charges the jury. Jury deliberations

AY 30 1974 Jury deliberations cont'd. Partial Verdict. Deft Novoa Guilty on ct. 1
Deft Papadakis not Guilty on ct. 6

AY 31 1974 Jury deliberations cont'd. Deft. Nieves not Guilty on ct. 8 - Nieves Discharged

UN 3 1974 Jury deliberations cont'd. Deft. Papadakis Guilty on count 7. Sentence June 4, 1974 - 2:30 P.M. Pre-Sent. investigation ordered.

d Deft. Novoa Guilty on each of counts 4, 5, 6, 7, 8, 9, 10.

JUN 1974 Deft. Novoa - Sentenced July 2, 1974 10:00 A.M.

Deft. continued on present bail

Deft. has until 5:00 P.M. today to make bail in the amount of $50,000. P.R.B. Signed by Deft. - Defts wife, Defts Mother & Defts Brothers & Defts Mother in law. Secured by the deed of the Defts house.

Condition of Bail that the deft. Sign in Room 345 6:30 P.M. on Tuesdays and Thursdays of every week.

Wyatt, J. WM

JUN 14 1974 (Joseph Stone Esq., Lawrence Feld A.U.S.A. - Howard Chaim Reporter)

Deft. produced in court on writ

Deft. Demetrois Papadakis (atty present) sentenced to FIVE (5) YEARS on count 7, to run concurrently with sentence's now being served under indictments 71 Cr. 614 and 71 Cr. 972. Writ satisfied.

Wyatt, J.

JULY 2, 1974 Rudolph Giuliani A.U.S.A. - (Reporter Morris Klyman)

Deft. Joseph Novoa (atty present Barry Skolnick, Esq.)

Sentenced to FIVE (5) YEARS on count 1. TEN (10) YEARS, on ~~one~~ each of counts 4 thru 10, to run concurrently with each other. Sentence imposed on count 1, to run concurrently with sentence imposed on counts 4 thru 10. Deft. Remanded.

Wyatt, J.

AFFIDAVIT OF MICHAEL B. MUKASEY
SWORN TO APRIL 26, 1974 - IN
OPPOSITION TO DEFENDANT'S MOTIONS

INDORSEMENTS

AFFIDAVIT OF MICHAEL B. MUKASEY
SWORN TO APRIL 26, 1974 - IN
OPPOSITION TO DEFENDANT'S MOTIONS

NOTICE OF MOTION OF DEFENDANT JOSEPH NOVOA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

TO: PAUL J. CURRAN, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK
ATTENTION: JOSEPH JAFFE, ASSISTANT UNITED STATES ATTORNEY

PLEASE TAKE NOTICE, that on Friday, April 26, 1974, at 2:30 o'clock in the afternoon, in Courtroom 1106, United States District Courthouse for the Southern District of New York, Foley Square and Centre Street, before the Hon. INZER B. WYATT, the defendant in the above-captioned indictment, JOSEPH NOVOA, by his counsel, JAMES L. R. COSTELLO, J.D., shall move this Court for an Order:

I. Enjoining the Government of the United States from harassing and attempting to intimidate the defendant, JOSEPH NOVOA, and his wife, (Mrs.) CORAL NOVOA, and

II. Severing the defendant JOSEPH NOVOA's cause from that of the named co-defendants under the respective indictments in the Eastern and Southern Districts of New York, as more fully appears from,

A. Eastern District Criminal Indictment

No. 74-179, assigned to the Hon. JACK B. WEINSTEIN, and

B. Southern District Criminal Indictment No. 74 Criminal-229 assigned to the Hon. INZER B. WYATT, and

C. Southern District Criminal Indictment No. 74 Criminal-230 assigned to the Hon. FREDERICK vP. BRYAN, and

For a further Order consolidating all of the indictments, and after this consolidation, granting to the defendant JOSEPH NOVOA, a single and separate trial to prevent the CLEAR AND PRESENT DANGER of Double Jeopardy.

III. For a further Order directing the United States Attorney for the Southern District of New York to state affirmatively, and in writing, whether or not any of the defendants named under the respective indictments referred to in Sub-Divisions (A), (B) and (C) of Point No. II have either plead guilty and/or offered to testify for the Government of the United States against the defendant JOSEPH NOVOA;

and if the answer to this question is in the affirmative, state in writing, the exact date, the precise time, and the exact place, where this arrangement was entered into, together with the full and complete names, addresses,

titles, and functions of all persons present at this meeting, and/or these series of continuing meetings and/or conferences.

IV. For a further Order, patterned after the Order made and entered by the Hon. JACK B. WEINSTEIN in a companion case, on or about 12 March, 1974, directing the United States Attorney for the Southern District of New York, assigned as the Trial Attorney for the United States in the Southern District of New York, to attend at a time and place to be set by the Court, with his entire file in the case, including all copies of any Grand Jury Minutes and materials described in Section 3500 of Title 18 of the United States Code, and make all of these materials available should the Court direct and order these materials to be turned over to the defendant, JOSEPH NOVOA's Trial Counsel, and

that the United States shall also produce all documents and other written evidence that it intends to introduce into evidence during the trial of this action, so that these materials can be marked by the Clerk as exhibits; and the attorney for the defendant, JOSEPH NOVOA, be permitted and allowed to inspect and examine said materials.

V. That predicated upon THE PARTICULARIZED NEED of the defendant JOSEPH NOVOA, that an Order be made and entered directing the United States Attorney for the Southern District, to provide the defendant JOSEPH NOVOA's attorney,

NOTICE OF MOTION OF DEFENDANT JOSEPH NOVOA

JAMES L. R. COSTELLO, J.D., with the entire transcript of the Grand Jury's proceedings, and

VI. For the production of all evidence favorable to the defendant JOSEPH NOVOA, within the context of the decision rendered by the Supreme Court of the United States, in Brady v. Maryland, 373 U.S. 83; 10 L. Ed. 215, and

VII. For a further Order enjoining the United States Attorney for the Southern District of New York from the presentation of any superceding indictment, or new indictment, until the Government of the United States by the United States attorney for the Southern District of New York, has fully complied with the law relating to inspection and discovery, including all "Brady Material" as herein-before set forth, and, having served and filed written answers to the defendant JOSEPH NOVOA's Demand for a Bill of Particulars personally served upon the office of the United States Attorney for the Southern District of New York on 10 April, 1974, together with such other and further relief as to the Court seems just and proper.

DATED: New York, N.Y.
April 19, 1974

Yours, etc.

/s/ James L. R. Costello
JAMES L.R. COSTELLO, J.D.
Attorney for Defendant JOSEPH NOVOA
Office & P.O. Addresses:
84 Greenway South, Forest Hills
Gardens, N.Y. 11375 -and-
Suite 906 170 Broadway
New York, New York 10038
Telephone No. (212) BA 7-4233-34-98

TO:
PAUL J. CURRAN,
UNITED STATES ATTORNEY
FOR THE SOUTHERN
DISTRICT OF NEW YORK

ATTENTION: ASSISTANT UNITED
STATES ATTORNEY JOSEPH JAFFE

AFFIDAVIT OF JAMES L.R. COSTELLO
SWORN TO APRIL 19, 1974 IN SUPPORT
OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES L. R. COSTELLO, J.D., being duly sworn, deposes and says:

That he is an attorney and counselor at law, duly admitted to practice law before all of the Courts of the State of New York, the United States District Court for Connecticut (at New Haven); the Southern District of New York; the Eastern District of New York; the United States Court of Appeals for the Second Circuit; and the Supreme Court of the United States, and as the attorney for the defendant JOSEPH NOVOA, submits this affidavit in support of the relief sought by the defendant JOSEPH NOVOA, for the following reasons:

PRIOR PROCEEDINGS

The defendant JOSEPH NOVOA is a New York City Police Officer who has been indicted in both the Eastern District and Southern District of New York as more fully appears from Mr. NOVOA's affidavit of merits attached hereto and made a part hereof; and referred to in his Notice of

Motion. The indictment in the United States District Court for the Eastern District of New York has been assigned Indictment No. 74 CR-179, and assigned to the Hon. JACK B. WEINSTEIN for all purposes.

The pre-trial conference was conducted by the Hon. JACK B. WEINSTEIN on 21 March, 1974 after all parties had received copies of Judge WEINSTEIN's Order made and entered on 12 March, 1974. A copy of Judge WEINSTEIN's Order is attached hereto and made a part hereof and labelled Exhibit A.

The defendant JOSEPH NOVOA has also served and filed upon the United States Attorney for the Eastern District of New York, his Demand for a Bill of Particulars, said Demand having been served and filed on the United States Attorney for the Eastern District of New York on March 21, 1974.

Regrettably, the United States Attorney for the Eastern District of New York has utterly failed to comply with either the Order of the Hon. JACK B. WEINSTEIN (Exhibit A), or the defendant's Demand for a Bill of Particulars. Therefore, there is currently pending in the Eastern District of New York a motion to preclude the United States Attorney for the Eastern District from offering any evidence in support of the allegations contained in Indictment No. 74-179,

or any superceding indictment, until such time as the United States Attorney has complied with the Order of Judge WEINSTEIN and the defendant's Demand for a Bill of Particulars.

PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

On or about the 22nd day of March, 1974 the defendant, JOSEPH NOVOA, was arraigned before Judge CONSTANCE BAKER MOTLEY, and the same bail conditions as set in the Eastern District were continued, and the defendant drew the Hon. INZER B. WYATT for Indictment No. 74CR-229; and the Hon. FREDERICK vP. BRYAN, under Indictment No. 74CR-230.

On or about Friday, March 22, 1974, defendant, JOSEPH NOVOA, by his attorney, and attorneys representing co-defendant GABRIEL STEFANIA, and JOHN EGAN, appeared in Judge BRYAN's Chambers, at which time an informal discussion took place relative to Indictment No. 74CR-230. Judge BRYAN indicated that he would tentatively plan to try the case assigned to him on June 4, 1974, and suggested that all preliminary matters be handled on an informal basis if possible, and recommended that letters be sent to the United States Attorney on or before March 27, 1974. Because of deponent's illness, his informal letter was not served upon the Assistant United States Attorney, JOSEPH JAFFE, ESQ., until March 29, 1974. However, the matter is academic

because Mr. JAFFE and deponent disagreed as to their respective rights and duties. A copy of deponent's letter dated March 29, 1974 directed to Mr. JAFFE: and Mr. JAFFE's answering letter dated April 3, 1974 are attached to the original of the moving papers and labelled Exhibits B and C respectively. Prior to this conference, Mr. JAFFE advised your deponent and co-counsel of the fact that he had been a law clerk for the Hon. FREDERICK vP. BRYAN before entering the office of the United States Attorney's Office for the Southern District.

On or about 29 March, 1974 the defendant JOSEPH NOVOA's cause was apparently added to the Calendar of the Hon. INZER B. WYATT for a pre-trial conference relative to Indictment No. 74CR-229. Judge WYATT suggested that the attorneys for the respective parties (the United States and defendant JOSEPH NOVOA) attempt to resolve their questions relating to inspection and discovery on an informal basis. However, when apprised of the fact that Mr. JAFFE and this writer disagreed as to the interpretation of the applicable law, which in deponent's view, is supported by the order made and entered by the Hon. JACK B. WEINSTEIN, a copy of which is attached hereto and made a part hereof, and labelled Exhibit A, Judge WYATT suggested that the defendant

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JOSEPH NOVOA serve his Demand for a Bill of Particulars upon the United States Attorney not later than the 12th day of April, 1974. In compliance with Judge WYATT's order, deponent personally served a 13-page Demand for a Bill of Particulars upon the United States Attorney for the Southern District of New York the afternoon of April 10, 1974 under both Indictment No. 74CR-229 and Indictment No. 74CR-230.

Judge WYATT further indicated that should any problems arise relating to the defendant's Demand for a Bill of Particulars, or additional inspection and discovery material obtainable only via Court Order, that the same might be obtained upon submission and without the necessity of oral argument.

Wednesday morning, April 17, 1974, when deponent telephoned the Chambers of the Hon. FREDERICK vP. BRYAN, Judge BRYAN's Secretary, Mrs. Brooks, suggested that the motion be made returnable in Judge BRYAN's Chambers, Suite 2101 of the United States District Courthouse, with the additional request that Mr. JAFFE be given sufficient time to reply.

Within this context, both motions are returnable on Friday, April 26, 1974, in the Southern District of New York. These motions, together with the proceedings in the Eastern District, have become necessary not only because of the facts and the applicable law, but also, because intelligence reports reaching deponent's office have indicated

AFFIDAVIT OF JAMES L.R. COSTELLO
SWORN TO APRIL 19, 1974 IN SUPPORT
OF MOTION

that one or more of the defendants named in the indictments currently pending in the Southern District of New York may be witnesses used by the Government to testify against the defendant JOSEPH NOVOA: and for the additional reason, that deponent has been informed that another and new indictment charging the defendant JOSEPH NOVOA with Income Tax evasion, is imminent, and predicated upon the applicable law and knowledge obtained by your deponent in the course of his duties as defendant JOSEPH NOVOA's trial counsel, requires that the relief as sought for by the defendant JOSEPH NOVOA in his respective Notice of Motion be, in all respects, granted.

DATED: New York, N.Y.
April 19, 1974.

/s/ James L. R. Costello, J.D.
James L. R. Costello, J.D.
Attorney for Defendant JOSEPH NOVOA

[Duly sworn to
April 19, 1974.]

AFFIDAVIT OF MICHAEL B. MUKASEY
SWORN TO APRIL 26, 1974 - IN
OPPOSITION TO DEFENDANT'S MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK :
SOUTHERN DISTRICT OF NEW YORK)

MICHAEL B. MUKASEY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. This affidavit is submitted in response to the various pre-trial motions of defendant Joseph Novoa in the above-entitled case.

2. On April 10, 1974 the defendant served a fourteen page demand for a Bill of Particulars which seeks, in substance, production of the Government's files and disclosure of the Government's evidence, witnesses, and legal theory in advance of trial. This excessive and improper demand was followed by similar omnibus motions, served April 19, 1973, for injunctive relief, a severance, a list of the Government's witnesses, pre-trial discovery of all grand jury testimony and all material producible under 18 U.S.C. §3500, all trial exhibits and all material covered by Brady v. Maryland, 373 U.S. 83 (1963). While

the Government is perfectly willing to respond to reasonable requests for particulars and discovery, it cannot and does not consent to these unreasonable applications for the reasons set forth below and in the memorandum of law submitted herewith.

3. Before addressing these motions in detail, it is appropriate and important to comment briefly on the defendant's "affidavit of merits", sworn to April 10, 1974, and submitted in support of the omnibus motions. In that affidavit, the defendant swears that after his arrest he told Assistant United States Attorneys Joseph Jaffe and Walter Higgins that he "was completely and absolutely innocent" and that he "was willing to take a lie detector test" to prove this claim. (Novoa Aff. at pp. 2-3) I am informed by Messrs. Jaffe and Higgins that these averments are completely untrue. In fact, the defendant, during a discussion relating to his possible cooperation with the Government, made statements to Mr. Jaffe and Assistant United States Attorney Rudolph Giuliani which were at total variance with his present assertion of innocence. Although it was understood that these statements would not be used against him,* mention

* The Government will honor its obligation and does not intend to offer these statements on its direct case.

of that discussion regrettably has now become necessary in light of Novoa's breach of that understanding and flagrantly improper attempt to influence the trial judge at this time on the ultimate issue of his guilt or innocence.

Demand for Bill of Particulars

4. The Government objects to supplying the information requested in Items 1, 2 and 3 on the grounds that they call for disclosure of the Government's evidence and legal theory in advance of trial.

5. With respect to Item 4, the Government will provide the information requested concerning when and where the persons were arrested and the disposition of the charges, if any, against them.

6. With respect to Item 5, the Government will provide a statement as to when, where and with whom the $1200 referred to in paragraph 2 of Count One was divided and will specify the amount received by each person.

7. With respect to Item 7, the Government will specify the approximate date and time when the defendant is alleged to have seized approximately 5 kilograms of heroin and cocaine as set forth in paragraph 2 of Count One.

8. The Government will supply the information requested by Item No. 7.

9. The Government objects to Item No. 8 on the ground that it is frivolous.

10. The Government objects to providing the information requested in Items 9, 10, 11, 12 and 13, except to the extent of supplying the names of any co-conspirators who are not named in the indictment, on the grounds that these requests improperly seek disclosure of the Government's evidence and legal theory in advance of trial.

11. The Government objects to providing the information requested by Items 14, 15, 16 and 17 on the grounds that these demands seek information not properly obtainable by way of a bill of particulars and further that the information requested by Items 15 and 17 is irrelevant to the charges set forth in the indictment.

12. The Government will provide the information requested by Item 18 to the extent that said information is available.

13. The Government objects to providing the information requested by Item 19 9n the ground that the information sought is irrelevant to the charges set forth in the indictment and is not properly obtainable by way of bill of particulars.

14. The Government will provide the approximate time and date when the defendant participated in the search

referred to in Item 20. The Government objects to providing the information sought by Items 20(a), (b) and (c) on the grounds that these demands seek information not properly obtainable by way of a bill of particulars.

15. The Government will provide the information requested by Item 21 to the extent available except that it objects to providing the residence addresses on the ground that revealing said information might endanger the safety of the persons involved.

16. The Government will profice the information requested by Items 22 and 23 to the extent said information is available.

17. The Government objects to Item 24 on the ground that it seeks irrelevant information not properly obtainable by way of a bill of particulars.

18. The Government will provide the information requested by Items 25, 26, 27 and 28 to the extent said information is available.

19. With respect to Item 29, the Government will provide the approximate date, time and place of the meeting or meetings during which the $54,000 referred to in overt act No. 12 was divided, the names of the persons present at said meeting or meetings and the names of the persons who transferred and sold the five kilograms of

heroin and cocaine. The balance of the information sought by Item 29 is irrelevant to the charges set forth in the indictment and not properly obtainable by way of bill of particulars.

20. The Government objects to Item 30 on the ground that it improperly seeks disclosure of the Government's evidence and legal theory in advance of trial.

21. The Government objects to Item 31 on the ground that it seeks irrelevant information not properly obtainable by way of a bill of particulars.

22. With respect to Items 32, 33 and 34, the Government will provide information as to the approximate date, time and place of the offenses alleged in Counts Two and Three of the indictment, to the extent said information is available. The Government objects to provideng the balance of the information sought by these demands on the grounds that said demands improperly seeks disclosure of the Government's evidence and legal theory in advance of trial or irrelevant information not properly obtainable by way of a bill of particulars.

23. With respect to Items 35, 36, 37, 38, 39 and 40, the Government objects to proficing the information requested, except the names of any co-conspirators not names in the indictment, on the grounds that said demands

improperly seek disclosure of the Government's evidence and legal theory in advance of trial and the names of potential Government witnesses in advance of trial.

24. The Government will provide the information requested by Items 41, 42, 43 and 44 to the extent said information is available.

25. The Government objects to providing the information sought by Item 45 on the grounds that it improperly seeks disclosure of the Government's evidence and legal theory in advance of trial.

26. The Government objects to providing the information sought by Item 46 on the ground that said demand seeks information not relevant to the charges set forth in this indictment.

27. Except to the extent that the Government has expressly consented to provide the information requested, as set forth above, the demand for particulars should be denied. Where the Government has consented to supply information relating to dates and times, approximate dates and times will be furnished unless more specific information is available.

INJUNCTION AGAINST HARRASSMENT

28. Novoa seeks an order enjoining the Government from harassing and intimidating himself and his wife. The sole basis for this relief is a handwritten note purportedly sent to defendant's attorney by defendant's wife in which she alleges harassment as a result of receiving four telephone calls which from the letter itself have appeared to cease. It is submitted that this application is frivolous and should be denied.

SEVERANCE

29. Defendant's request for a severance fails to allege a single, legally sufficient ground to support that application or the further one that all the indictments pending against Novoa in this District and elsewhere be consolidated. Joinder in this indictment is proper and the defendant does not allege any facts which would warrant the exercise this Court's discretion under Fed. R. Crim. P. 14.

DISCLOSURE OF THE IDENTITY AND LOCATION OF THE GOVERNMENT'S WITNESSES

30. The defendant requests that the Government be directed to state whether any of the co-defendants in the various indictments in which he is named has either entered a guilty plea or has offered to testify for the

the Government and all the facts and circumstances relating thereto. This damand which, in substance, seeks the names of Government's witnesses in advance of trial, is totally improper.

DISCLOSURE OF "3500" MATERIAL AND TRIAL EXHIBITS

31. Citing an order entered by Judge Weinstein in the Eastern District of New York, the defendant requests this Court to direct the Government to make available in Court "the entire file in the case", including all grand jury minutes and materials producible under 18 U.S.C. §3500. He also requests that he be permitted to inspect before trial all the exhibits that the Government intends to offer at trial. With all due deference and respect to Judge Weinstein, this demand is entirely improper and contravenes the established law and practice in this District regarding disclosure of such materials.

DISCLOSURE OF GRAND JURY PROCEEDINGS

32. Novoa's request for "the entire transcript of the Grand Jury's proceedings", which appears to be covered by the preceding motion, is said to be justified by the defendant's "particularized need." Yet the nature of the "need" and a description of its "particularization"

are nowhere supplied, except for some allegations that the defendant's accomplices are expected to testify against him. This is totally insufficient and requires denial of the motion.

"BRADY" MATERIAL

33. The Government is aware of and will comply with its obligation under Brady v. Maryland, 373 U.S. 83 (1963). As more fully set forth in the accompanying memorandum of law, the rule concerning disclosure of exculpatory material or material favorable to the defendant established in Brady imposes no pre-trial obligation upon the Government. However, the Government becomes aware of the existence of any meterial within the ambit of Brady, the disclosure of which is necessary in advance of trial to permit the defense to make effective use of such material, the Government will seasonably disclose the existence of such material to the defendant.

INJUNCTION AGAINST FUTURE INDICTMENTS

34. Novoa requests an order enjoing the Government from seeking any future indictments against him until all his pre-trial requests are fully complied with. This is a frivolous application without any legal basis whatsoever. If further evidence of Novoa's unlawful activities

is uncovered and warrants presentation to a Grand Jury in this or any other judicial district, appropriate action should and will be taken to protect the public interest.

WHEREFORE, it is respectfully requested that the defendants motions should be denied except as expressly consented to.

s/ Michael B. Mukasey
MICHAEL B. MUKASEY
Assistant United States Attorney

(Duly sworn to
April 26, 1974)

* * * * *

we get started tomorrow?

THE COURT: No--any progress that we make this afternoon will be that much less tomorrow. No, the government will call its first witness.

MR. FELD: The government calls Salvatore Boutureira.

THE COURT: We like to ask all persons in the court, while the witness is being sworn, to be seated, silent and at attention.

All right, Mr. Clerk.

S A L V A T O R E B O U T U R E I R A, called as a witness by the government, being duly sworn, took the stand and testified as follows:

THE COURT: Please try to keep your voice up so that the gentlemen at the farthest table can hear you.

MR. FELD: May I proceed, your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. FELD:

Q Mr. Boutureira, do you know an individual by the name of Carl Aguiluz?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And how do you know him?

A He is my brother-in-law.

Q Do you know an individual by the name of Joseph Novoa?

A Yes, sir.

THE COURT: Wait. When you say your "brother-in-law" am I to assume that you are married to his sister?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Do you know Mr. Joseph Novoa?

A Yes, sir.

Q And how do you know Mr. Joseph Novoa?

A Well, he used to work--he worked with my brother-in-law; they were partners.

Q And what did they do?

A Police officers.

Q Do you see Mr. Novoa in the court room?

A Yes, sir.

Q Would you identify him, please?

A The man with the wine jacket.

THE COURT: Is the identification conceded?

MR. COSTELLO: Yes, your Honor.

THE COURT: All right, the record will so show it.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you know a man by the name of Peter Daly?

A Yes, sir.

Q And how do you know Peter Daly?

A He is also partners with my brother-in-law.

Q And he was a police officer.

A Yes, sir.

Q Do you know a man by the name of Frank Ramos?

A Yes, sir.

Q Do you know a man by the name of Jimmy the Greek?

A Yes, sir.

Q Do you seeJimmy the Greek in the court room here?

A Yes, sir.

Q Would you identify him, please.

A He is the gentleman with the blue shirt over there (indicating).

THE COURT: Is the identification conceded?

MR. STONE: So conceded, your Honor.

THE COURT: All right, the record may so reflect.

Q Do you know a man by the name of Joaquin Nieves?

A Yes, sir.

Q Do you see him in the court room?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes, sir.

Q Would you stand up--

A (After standing) Yes, he is the gentleman in the corner there (indicating)

MR. SCHWARTZ: We concede the identification.

THE COURT: All right, the identification is conceded; the record may so show.

Q Directing your attention to the period in or about April 1970, where did you reside?

A At 14 Bedford Street.

MR. SCHWARTZ: Will you instruct the witness to speak up; it is very hard to hear him.

THE COURT: Yes; this is a big room and with a high ceiling, so try to keep your voice up.

(Answer read by the reporter.

THE COURT: Is that in Brooklyn?

THE WITNESS: No, New York City.

THE COURT: In New York City, in Manhattan; all right.

Q And what part of Manhattan, sir?

A Greenwich Village.

Q During that period of time did Carl Aguiluz have occasion to visit you at your house?

A Yes, sir.

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Q And could you tell us what happened on that particular occasion?

MR. COSTELLO: May we have a date and time, your Honor?

THE COURT: Yes; when is this?

MR. FELD: In or about April, 1970, your Honor.

MR. COSTELLO: THAT is too vague, your Honor. I want a specific date.

THE COURT: Well, you can get it on cross examination.

(Question read by the reporter)

A Well, one day my brother-in-law came over to the house, and he brought a bag, and he asked me to put away. I took the bag and I put away in a closet.

MR. SCHWARTZ: I cann't hear him, your Honor

(Record read by the reporter)

A (continuing) A few days later he stopped by--a few days later I look at the bag--about 4 or 5 days after that, and I saw he had 5 cellophane bags with powders--with a white powder in there, so when I saw him the next day I asked him what it was. He told me he meant to take it away but he did not have a chance. He told me it was drugs--

MR. SCHWARTZ: Objection, your Honor.

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THE COURT: He says he told him it was drugs; no, I will permit it.

Q And did he tell you what kind of drugs?

A Yes, then he told me it was 3 kilograms of heroin.

MR. SCHWARTZ: Objection, your Honor.

THE COURT: I take it the government claims that Aguiluz was one of the "known or unknown" co-conspirators.

MR. FELD: That is correct, your Honor.

THE COURT: All right, I have to admit it under these circumstances.

A It was--

MR. STONE: Would you give an instruction to the effect that it is not binding on Pappas?

THE COURT: Not binding on who?

MR. STONE: Pappas.

THE COURT: Oh, no.

MR. STONE: A CORRECTED INSTRUCTION that the jury will determine whether or not it is binding--whether they find a conspiracy exists.

MR. FELD: Your Honor, there are two conspiracy counts in the indictment--

MR. COSTELLO: I cannot hear you, Mr. Feld.

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MR. FELD: I will repeat myself. There are two conspiracy counts in the indictment.

MR. STONE: That is correct, your Honor--one of which would not affect Mr. Pappas.

MR. SCHWARTZ: Nor Mr. Nieves.

MR. FELD: But the other count would, may it please the court.

MR. COSTELLO: I object to the entire line of testimony insofar as it relates to Detective Joseph Novoa.

THE COURT: No, it will be admitted. Whether or not it is connected later is for me to determine, and not the jury, and it can be taken subject to connection and subject to a motion to strike.

All right, go ahead.

MR. FELD: Would you repeat the last question and answer, please?

(Record read)

A (continuing) And two more bags--

MR. COSTELLO: Excuse me, your Honor, may we have a date as to this alleged conversation?

THE COURT: This is April 1970?

THE WITNESS: No, I don't think it would be April. It would be anywheres around--it could be March--

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February, March, April, around those months,

THE COURT: February, March, April 1970.

THE WITNESS: Right.

THE COURT: ALL right.

THE WITNESS: I couldn't say exactly the month; I don't know--it would be around--somewheres around there.

THE COURT: All right.

THE WITNESS: It could bein May--either one. It would be around that area.

THE COURT: All right--February, March, April, May of 1970.

Q Do you remember whether it was the early part of the year?

MR. COSTELLO: Objection, your Honor; it is leading. He is trying to testify for the man.

THE COURT: No, I will permit it; overruled.

(Record read by the reporter)

A Yes, it was the early part--the first few months of the year it was.

Q What happened after that conversation?

MR. COSTELLO: Excuse me, is he referring to that conversation relating to narcotics, your Honor?

THE COURT: Yes.

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MR. COSTELLO: Thank you.

THE COURT: The conversation with Aguiluz where Aguiluz said that 3 kilograms of heroin--is that right?

THE WITNESS: That is right, and two kilograms of cocaine.

THE COURT: And two kilograms of cocaine. And a kilogram is 2.2 pounds, is it not?

MR. SCHWARTZ: That is objected to, your Honor.

THE COURT: What?

MR. SCHWARTZ: Your Honor, how does he know?

THE COURT: Well, I will take judicial notice, then, and I will instruct the jury a kilogram is 2.2 pounds.

MR. SCHWARTZ: Your Honor, I move for the withdrawal of a juror and the declaration of a mistrial.

THE COURT: Well, do you seriously contend that a kilogram is not equivalent to 2.2 pounds?

MR. SCHWARTZ: Your Honor, the true facts have to come in through some other sources--

THE COURT: No, I will take judicial notice of this. I think this is an outrageous frivolity. I have never heard in 11 years on the bench such frivolity.

A kilogram is a unit of weight, and it is the

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equivalent of 2.2 pounds, and the jury might as well know it, as I know it and as everybody knows it.

All right, let us go on.

Q After you had this conversation with Carl Aguiluz, what happened?

A Well, he asked me if I could sell it and I--

MR. COSTELLO: Objection, if your Honor please--withdrawn.

THE COURT: All right, go ahead.

(Record read by the reporter)

A (continued) I told him I would try.

Q So then what did you do?

A He asked me if I knew somebody, and I told him, yes, I would speak to somebody.

So I went down to 14th Street--

Q In Manhattan?

A In Manhattan--I spoke to Frank Ramos.

Q And how did you know Frank Ramos?

A Well, I know Frank Ramos for many years.

Q And what happened when you met Frank Ramos?

A Well, I asked him if he could sell this drugs and he said that he had to have two samples of it.

Q And what did you say?

A Well, I told him okay, that I would get him

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the samples, so I went over to the house and from each bag I took--

MR. COSTELLO: I cannot understand it.

(Record read by the reporter)

A (continuing) I took a little bit of powder with a teaspoon, and I put in a separate envelope and I mark each package with number 1, just like on the envelope; number 2, number 3, number 4 and number 5.

I took those bags over to Frank Ramos and he went to the toilet, stayed there a while; then he come out and said the drugs were good, and he offered me $6,000 a kilo, and I told him that I didn't think it was enough but I would let him know.

So I went outside and I saw Carl and I told him, so he said it wasn't enough, that the drugs were--they were going for more money than that--that the heroin had to be anywheres between $12,000 and $15,00, and that the cocaine had to be anywheres between $9,000 and $11,000.

MR. SCHWARTZ: Your Honor, may I have a continuing objection to this?

THE COURT: Yes, of course.

A (continued) So we agreed on a price that it would be $12,500 a kilo of heroin and $9,500 a kilo

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of cocaine.

Q And who was this conversation with?

A With Frank Ramos.

THE COURT: I think we will have to stop this afternoon--it is 4 o'clock and I told the jurors and I told everybody that we would stop at 4 o'clock.

Now Madam Foreman and ladies and gentlemen, please keep in mind my instructions not to discuss the case amongst yourselves or with anybody else; and don't read about the case in the newspapers--I don't know that there will be anything about it, but don't read it; don't see anything about it on television, don't hear anything about it on radio. Just listen--see something else--anything else but not this or about any other narcotics matter.

All right, you may be excused. We will meet here--you will assemble in the jury room, of course, at 10 o'clock tomorrow morning, and we hope we can start promptly.

THE CLERK: The jury may be excused until 10 o'clock tomorrow morning.

(Whereupon the jury left the court room at 4:03 pm)

THE COURT: All right; is there anything else?

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MR. GIULIANI: Your Honor, may I ask that counsel and defendants, including of course counsel for the government, be instructed to remain in the court room until all the jurors have left the building, rather than going outside and going down in the elevators with them?

THE COURT: Mr. Giuliani, I really never have given such instruction. I think it is better for everybody to avoid the jurors but I have usually left that to the sound discretion of counsel. I think counsel here are able and professional, and they will conduct themselves with high professional regard for decorum. It is like talking to a witness at recesses. I really hesitate to give the instruction because I don't like to suggest that counsel won't abide with the proprieties. That is the reason--I know we shouldn't mix or mingle with the jurors--I think it is better, but I think I will assume that counsel and the defendants will observe that.

I think we can all agree that the defendants and their lawyers should not have any contact outside the court room with the jurors.

MR. GIULIANI: Your Honor, the only reason that I--

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THE COURT: Therefore, I think I would rather not give an instruction. Counsel know my views, and I am sure counsel will agree with me as to the propriety.

MR. GIULIANI: In any event, the only reason I bring it up is not because I am suggesting that counsel will act in any way different, but it has been a problem for me at least in another trial, where an incident occurred and required a mistrial because counsel was going down in the elevator with the juror and did not realize it was a juror, and there was a mistrial. That is the only reason I brought i up--not because--

THE COURT: Well, I am interested in your experience, Mr. Giuliani. We are all conscious of the problem, and, as I say, until something happens that makes me doubt the observance by counsel of the proprieties, I would rather not give instructions.

MR. GIULIANI: FINE.

THE COURT: But you, of course, are at perfect liberty, if you see or hear anything that requires my supervision or instruction, don't hesitate to bring it to my attention.

MR. GIULIANI: All right, your Honor.

THE COURT: All right.

MR. SCHWARTZ: Your Honor, could we possibly

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expedite matters by getting 3500 material of this witness? It was mentioned in the opening, I believe.

THE COURT: Yes, I think that is a good idea.

What about that, Mr. Giuliani and Mr. Feld? I have no power to compel it but I do agree with Mr. Schwartz that it is a good idea.

MR. FELD: Your Honor, we will make the 3500 material available today, but we would prefer that it not be taken out of the court house.

MR. STONE: That is an unfair burden on defense counsel.

MR. FELD: Your Honor, there are legitimate reasons for that request. We have had unfortunate problems in the past where after convictions and motions for a new trial based upon material which we turned over, which was later forged and mutilated, and would suggest--

MR. COSTELLO: Oh, your Honor!

MR. FELD: It has nothing to do with any of the counsel in this case, but I personally can cite you an instance where it occurred before Judge Frankel.

THE COURT: Is there very much of it?

MR. FELD: No, as far as this witness is

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concerned, it is the grand jury testimony, and perhaps one other statement, and it can be looked at here, and we will give counsel an opportunity to look at it downstairs in our office.

THE COURT: How many copies do you have?

MR. FELD: I have enough for each of them.

THE COURT: Well, give it to them and let them take it away. I will instruct them, and I am sure that they will do it anyway--don't make copies of the 3500 material; and turn it in tomorrow. But it is a little more inconvenient for counsel to have to read it in your office. I won't assume they will misconduct themselves. I suggest turning it over today.

Now counsel for the defense will be given this material, but bear in mind: guard it carefully; don't make copies of it, and turn it back to Mr. Feld tomorrow. Understood?

MR. SCHWARTZ: Yes, your Honor.

MR. FELD: We would like to mark it on the record.

THE COURT: All right.

MR. COSTELLO: Your Honor, there was one other point open and you suggested to me to hold it until

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later in the day with respect to the jury--and that is my application in behalf of Mr. Novoa to have his $2500 returned to him, upon information and belief that he is the only defendant who had to post collateral as well as cash. He has posted his home. He is a young man, with two young children. It is, of course, the start of their homestead. They are a young couple--

MR. STONE: May the witness be excused?

THE COURT: Yes; you may be excused until tomorrow morning at 10 o'clock.

(Witness leaves the stand)

MR. COSTELLO: Mr. Novoa has indicated to me a pressing need for the monies. As your Honor knows, he has been suspended from the job.

THE COURT: Does that mean that he is in a no-pay status?

MR. COSTELLO: That, your Honor, is just about it.

THE COURT: What has he got--a bond which is secured by--

THE DEFENDANT NOVOA: Your Honor, I was required to sign over my house--my wife and I both did, on a personal recognizance bond, and also post $2500 cash.

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THE COURT: Mr. Clerk, may I see the indictment?

(The clerk hands to the court)

THE COURT: Mr. Giuliani and Mr. Feld, Mr. Novoa is married; he has two children. It seems unlikely that he would run away. He has a $25,000 personal recognizance bond.

Did your wife sign the bond, Mr. Novoa?

DEFENDANT NOVOA: Yes, she did, sir.

THE COURT: Apparently Mrs. Novoa signed it. I would be included to let him have it.

MR. GIULIANI: Your Honor, was the deed turned over to us?

THE COURT: I don't know; it just says "Bail fixed at $25,000 personal recognizance bond with $2,500 cash".

MR. GIULIANI: Your Honor, it seems to me that that is relatively small bail--$25000 for a charge such as this, which carries a minimum sentence of 5 years should the defendant be convicted on any of the last numbered counts in the indictment. I do not think it is enormous bail. The defendant is not indigent. Should he be acquitted, that money will be returned to him very shortly.

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THE COURT: Does he have any previous record?

MR. GIULIANI: No, your Honor, he has not.

THE COURT: Well, no, I will take a chance on him. I will eliminate the requirement of the $2,500 cash. I will let the $25,000 personal recognizance bond stand. You may be right, Mr. Giuliani, but the man is married with two children. I think it is unlikely that he will run away.

MR. COSTELLO: THANK you very much.

THE COURT: You have to take some chances in this business.

MR. COSTELLO: THANK you very much, your Honor.

THE COURT: All right; good night.

(Court leaves)

MR. FELD: May the record reflect that government counsel is now handing over to defense counsel copies of the following:

Grand jury testimony of Salvatore Boutureira for March 8, 1974, consisting of 35 pages, which has been marked government's exhibit 3500.

(Grand jury testimony of Salvatore Boutureira marked government's exhibit 3500 for identification)

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MR. FELD: A two-page memorandum of interview of Salvatore Boutureira, dated March 26, 1974, which has been marked government's exhibit 3501.

(2-page memorandum dated March 26, 1974 marked government exhibit 3501 for identification).

(Adjourned to May 16, 1974 at 10 am.)

x x x

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UNITED STATES OF AMERICA

v. 74 Cr. 229

JOSEPH NOVOA, PETER DALY, FRANK RAMOS, DEMETRIOS PAPADAKIS, a/k/a "JIMMY PAPPAS," a k a "JIMMY THE GREEK," JOAQUIN NIEVES and ELISSA POSSAS.

May 16, 1974
10 A.M.

(Following in absence of the jury.)

THE COURT: We still do not have Mr. Papadakis and Mr. Stone.

MR. FELD: And Mr. Schwartz.

THE COURT: Well, Mr. Schwartz explained that if Mr. Stone is here we can go ahead without him, but Mr. Costello, I understand, has some motions that I can consider.

MR. COSTELLO: Yes, your Honor. In a sense it is a renewal of an application made earlier, which maybe in the interests of justice should be renewed periodically. If I may be able to briefly refer to the earlier motion brought on by the defendant Joseph Novoa for certain relief, as more fully appears from the record, and appearing in opposition to the relief sought by Mr. Novoa in the nature of a bill of particulars and Brady material, and so on, an affidavit was submitted by one Michael B. Mukasey. It is an affidavit verified

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the 26 April 1974. In this affidavit Mr. Mukasey indicated the government's recognition of the government's duty under Brady v. Maryland. It indicated that they were able to -- it is implicit in their statement -- to provide certain information demanded by Mr. Novoa in his bill of particulars, and in regard to other aspects they disagree with out contention as to their legal duties.

However, subeequent to the affidavit of the 26 of April '74, there were two intervening factors: One, Mr. Feld made an application for adjournment, and the court denied that except on a limited basis.

Another application was made by Mr.Giuliani, on April 8, who, I understand, is the head of the department, seeking an additional adjournment.

In addition to that, your Honor, there was a letter from Mr. Giuliani dated 10 May 1974, directed to counsel, indicating that he would not be able to provide the information that the government had heretofore said they were going to provide to Mr. Novoa, and which they are under a legal duty to provide in compliance with rule 7F of the Rules of Criminal Procedure.

MR. GIULIANI. Your Honor, if Mr. Costello will tell us what he specifically wants, if he will give it to us we will hand it to him right now.

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THE COURT: What is it you want?

MR. COSTELLO: May I continue?

THE COURT: There is no use in going on and on. I heard this before.

MR. COSTELLO: I am just establishing the fact that yesterday they handed me certain 3500 material. They have a shopping cart filled with material. They can have somebody screening that and presenting it in compliance with the law.

In regard to MR. Giuliani's statement, all he has to do is read our demand and read his answer. Here it is -- this is a copy that I received from your office, (indicating). This is what they told us they would give up.

THE COURT: Well, this is nonsense.

MR. COSTELLO: Your Honor, it may be nonsense -- and I know your Honor doesn't really mean that, because we are dealing with Mr. Novoa's rights.

THE COURT: But he insisted on going to trial.

MR. COSTELLO: Exactly.

THE COURT: And I am going to give him a prompt trial, and I am giving him a prompt trial. You can't have everything -- and there are only 24 hours a day, and I am not sympathetic to your application in the slightest. The government has said that if you will come to the point and say what it is you want -- I am not going to tell them to turn over their whole files to you.

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MR. COSTELLO: All that I am asking is that the government turn over to me what they said they would turn over in Mukasey's affidavit of 26 April, 1974. Here it is. I hand it to Mr. Giuliani.

MR. FELD: Your Honor, I have an application in connection with Mr. Boutureira, the witness on the stand. Our files disclose and from our conversations with him that he has a prior conviction in 1966 for possession of a pistol which was a misdemeanor and for which he received a suspended sentence, and our application would be that that be excluded for purposes of impeachment on cross-examination since it is not a felony and it is not a crime of moral turpitude.

MR. COSTELLO: May I be heard in opposition, your Honor?

THE COURT: Yes.

MR. COSTELLO: Your Honor, he had this information. He brings it up just as Costello will be examining, probably today. I know of no legal basis that would permit this. This is a goverment witness. This is a man who has admitted that he has been trafficking in most --

THE COURT: Just address yourself to the law point, sir.

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MR. COSTELLO: Yes.

THE COURT: A misdemeanor is not usually available for impeachment. Let's act like lawyers.

MR. COSTELLO: It is my position both on the facts and the applicable law of this case that I can proceed into that and that I can make that inquiry.

THE COURT: What was this for, carrying a pistol?

MR. FELD: Yes.

THE COURT: It seems clear from the discussions in McCormick, the Cleary edition, pages 84 and following, that the only misdemeanors which can be inquired about on cross-examination for impeachment purposes are those involving dishonesty or false statement, and since it is obvious that carrying a pistol doesn't involve dishonesty or false statement I rule that the inquiry into that subject will be excluded. All right.

MR. FELD: I just want to add one thing for the record: the Police Department yellow sheet for Mr. Boutureira discloses an arrest for gambling with no disposition. I am informed by Mr. Boutureira that that case was dismissed. As far as we know that is the only prior criminal record of this defendant.

THE COURT: An arrest is not admissible anyway.

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MR. FELD: I understand that.

THE COURT: It has to be a conviction.

All right.

MR. COSTELLO: It is my understanding -- I don't have Richardson before me, but it is my understanding that Richardson On Evidence is contrary to the citation that your Honor just referred to and it is my understanding that McCormick is more of a general book of evidence than the specific rules for New York law.

THE COURT: New York law isn't going to apply here, in any event. I am not interested in the New York law.

MR. COSTELLO: It is my understanding that the new Federal Rules of evidence are not in effect yet.

THE COURT: I don't look to the law of New York for rules of evidence to apply in a federal criminal trial.

Now, is Mr. Papadakis here yet?

THE CLERK: Yes.

THE COURT: So we are waiting on Mr. Stone. Do we have his office number?

(Pause.)

THE COURT: Mr. Clerk, suppose we bring out and we will open court.

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MR. STONE: Your Honor, something happened in the subway this morning.

THE COURT: I am disappointed, Mr. Stone. I know you are a conscientious man. It is terribly hard on me. We have sent for the jury.

(Jury present.)

THE COURT: Good morning. Now, members of the jury, I told you I would try to let you know for planning purposes our schedule in advance. We are going to sit today -- I am sorry we couldn't start on time, but getting everybody here at the same time is a little problem sometimes. We are going to sit until 12.45. Then we will resume at 2 o'clock. We will sit until 4.30 today and then we will stop.

Tomorrow we will begin at 9.30 in the morning instead of 10 o'clock and we will sit until 12.30. Tomorrow is Friday and on Fridays I usually have to keep the afternoon free for doing other things. So we will sit from 9.30 until 12.30 tomorrow, Friday, and then I will excuse the members of the jury until Monday morning.

All right. Shall we resume with the witness?

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S A L V A T O R E B O U T U R E I R A, resumed,
having been previously sworn, testified
further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. FELD:

THE CLERK: Mr. Boutureira, you are still under oath. You may be seated.

Q Mr. Boutureira, would you speak up so that everybody can hear you.

Yesterday I believe you testified that you had agreed on a price with Frank Ramos concerning these items; is that correct?

What happened after that; what did you do?

A Well, I gavehim the price of $12,000 on the kilo of heroin and $9500 on the kilo of cocaine. I will get $12,000 from the heroin and the 500 left Frankie will get and I would get $9000 from the cocaine and Frankie will get the 500, plus whatever commission we get.

So Frankie said he had a buyer for the whole thing and I told him if he had the money -- because he wanted me to bring the merchandise over to him and let him sell it. I told him no, that I needed the money. So I left. I told that to Carl.

THE COURT: This is at the Cafe de Madrid?

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THE WITNESS: Yes, sir.

THE COURT: You were talking to Ramos at the Cafe de Madrid?

THE WITNESS: Yes, sir.

THE COURT: When you agreed with him on the price you left?

THE WITNESS: Yes, sir.

THE COURT: All right.

A After I left I met with Carl. I told him what had been arranged, so a few days went by and Frank Ramos called me to tell me he had a buyer for the whole thing. So I went over to the Cafe Madrid and then he told me they didn't have the money for the whole thing. They only had the money to buy one kilogram.

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MR. COSTELLO: Can we have an identification as to "they," your Honor?

THE COURT: Yes. Did he tell you who the purchasers were going to be?

THE WITNESS: No, your Honor, not yet.

MR. COSTELLO: May we also have a time and hour whenever possible?

THE COURT: Yes.

MR. COSTELLO: Thank you, your Honor, sir.

Q Continue.

A So -- well, when he told me that he had the buyer for the whole thing I went out and I saw Carl and I told him, so we went in my car -- I went in my car, and then in the other car went Carl, Joe Novoa and Pete Daly.

MR. COSTELLO: The time and date, please?

THE COURT: Yes.

THE WITNESS: I don't recall the date.

MR. COSTELLO: The time?

THE WITNESS: I can't recall the time -- it would be in the afternoon some time -- some time in the afternoon. I don't know the time.

MR. COSTELLO: The month, the year?

THE WITNESS: 1970.

THE COURT: Well, the year is 1970, we know

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that.

Is it April or May?

THE WITNESS: So I went over to my house and they followed me --

MR. COSTELLO: Excuse me, he hasn't answered my question or your question.

THE COURT: Well, you can ask him on cross-examination.

Let's go on. Next question.

Q Mr. Boutureira, do you recall the approximate time in 1970 when this event occurred?

A This would have been anywhere between 6 and 9 o'clock.

Q All right, will you continue?

A I went over to my house. They followed me and they waited downstairs. I went upstairs. I went to the closet and I took the bag with the packages inside, with the drugs inside, and I got into my car and I drove away to 14th Street and they followed me. I went to the basement --

THE COURT: Did you take any other drugs with you to 14th Street?

THE WITNESS: Yes.

THE COURT: How much?

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THE WITNESS: The bag, the whole amount.

THE COURT: The whole amount. How much was it?

THE WITNESS: There were three -- five packages -- 3 kilos of heroin and 2 kilos of cocaine.

THE COURT: All right, you took it to 14th Street?

THE WITNESS: Yes, your Honor.

THE COURT: And you say Joe Novoa and Pete Daly followed you in another car, is that it?

THE WITNESS: Yes.

THE COURT: All right, go ahead.

A (Continuing) So I went to the basement --

Q The basement of where?

A On 14th Street, the club.

Q What club are you referring to?

A Club Espana.

Q And is that a social club?

A A social club.

Q That you belong to?

A Yes, I am a member.

Q All right, what did you do when you went down to the basement?

A I hid all the packages. I hid them underneath

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the wood because this place is in ruins. It was being fixed to be a club. It used to be a bowling alley, so there is a lot of wood in there. So I hid everything in there. Then I went over to the Cafe Madrid and I spoke to Frankie, and Frankie told me they couldn't buy the whole thing, they had no money, that they could only buy one kilogram.

So I arranged -- and he said for that night. I went back to 14th Street -- I went outside the Cafe Madrid. I met Carl, Joe Novoa and Pete Daly, and I told them what I was going to do, so they wanted to know exactly what I do so that they can watch me to make sure nothing happens.

MR. COSTELLO: Objection to the conclusionary remarks. I want Q and A -- I want questions and answers. I want the time of day.

MR. FELD: Your Honor, the witness was saying what was said.

THE COURT: Don't argue with me. Objection overruled.

MR. COSTELLO: Exception, sir.

Q Will you continue, Mr. Boutureira?

A So I went downstairs -- this was late, because there was nobody in the club. That is the only time

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I can go in the club so that nobody can see, so I went downstairs and I took one package, of one kilo of heroin and I walked down an alley into the parking lot and I put it underneath a board.

Q Where was this parking lot?

A The parking lot is on 13th Street, right off Eighth Avenue.

Q And was Carl Aguiluz, Joe Novoa and Daly there?

MR. COSTELLO: Objection, your Honor. He is testifying for the witness.

THE COURT: Overruled.

A They werewaiting for me over there by the park. That is right across the street from the parking lot. By that they could see where everything was.

MR. COSTELLO: Objection to the conclusion as to what Mr. Novoa could see.

THE COURT: Overruled.

A I --

Q After you placed the package underneath a board, what did you do?

A I walked over to the park and I spoke to them, so they decided that --

MR. COSTELLO: Objection to the conclusion as to what Detective Novoa decided.

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THE COURT: Overruled.

Q Just tell us what they said to you.

A Well, they said to me that Joe Novoa and Pete Daly, they would stay in the park and watch the board where, you know -- where everything was -- where the package was, and Carl would be on 14th Street watching the Cafe Madrid to make sure nothing happened to me.

So I walked over to Cafe Madrid -- I have my car parked on 14th Street at that time, so I walked over to Cafe Madrid, and when I got there Frankie told me that everything was set, that he had the money, and he point out a couple to me.

Q Who was the couple?

A At that time I didn't know the name until later on, but it was supposed to be Jimmy the Greek --

MR. STONE: Objection to what it was supposed to be.

Q Who was it?

A It was Jimmy the Greek, and a girl, a Brazilian girl that I was introduced to later on by the name of Elissa or something like that.

So I went over to the kitchen with Frankie and he show me the package in a brown paper bag with the money. So I want to take the money and leave, and he say no, that

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everything has to be finished, that he was responsible for the money.

So I went out to the bar. I told him where everything was, how it was in the parking lot underneath theboard.

THE COURT: You told him you had the kilogram of drugs that was in the parking lot under the board?

THE WITNESS: Yes.

THE COURT: So that they could go and get it?

THE WITNESS: Yes.

THE COURT: All right.

A (Continuing) Jimmy the Greek got up and he signalled somebody -- I don't know where it was -- that this man came in. It was a tall man with a black leather jacket, and he spoke to Jimmy the Greek and he left.

A few minutes later the phone rang. Frankie answered the telephone. Jimmy the Greek went over to the telephone and then come out and him and the girl left. Frankie came over to me and said everything was okay.

I went in the kitchen and I took the money and I stashed it in my shirt, underneath the coat.

Q Underneath the shirt?

A Underneath the shirt.

Q And then you left the Cafe Madrid?

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Q And then you left the Cafe Madrid?

A I left the Cafe Madrid. I got into my car and I drove away a little bit past Seventh Avenue where Carl was waiting for me. We waited a minute or so. Another car pulled up with Joe Novoa and Pete Daly, so I followed them --

MR. COSTELLO: What time, your Honor?

THE WITNESS: It was night.

THE COURT: He says it was night.

A (Continuing) So I fcllowed them and we went over to the Hotel Taft.

Q Where is that?

A Well, some place -- I think it is Seventh Avenue in the fifties -- could be 51st -- around there.

Q What happened when you went into the Hotel Taft?

A We walked in, the three of us together -- the three of them and me -- Carl and Pete Daly stood with me while Joe went over and got a key.

Then we went upstairs. We got in that room and I took the money --

MR. COSTELLO: Room number, your Honor?

THE COURT: You can ask that on cross-examination. Go ahead.

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A (Continuing) I put all the money on top of the bed and we started counting it because the bunches were in thousands, I think it was -- anyway, we put them in thousands.

Q How much money was there?

A There was $12,000.

So after the money was counted Carl -- Carl asked how the split was going to be, so Joe answered, "Four ways."

So we took $3000 apiece and I left -- I don't know whether they left or went out with me -- that I don't recall. I know I left.

Q Was there any discussion while you werecounting the money?

A Yes, sir. They were saying how it happened on the parking lot, that they saw this motorcycle come in and --

MR. COSTELLO: Objection, unless identification as to who said what to whom.

THE COURT: Overruled. Go ahead.

A (Continuing) This motorcyle come inwith a man with a jacket -- a leather jacket or something, and he went over to the board, take the package from underneath the board and left it, and then a cab just pulled up and this man went over and threw the package inside the window

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into the cab, and the cab went one way and the motorcycle another way, and I couldn't see who it was.

Q Okay. Now, after you left what was the next thing that happened?

A Well, the next day, or a couple of days later I got a phone call from Frankie saying that he had arranged for another -- for another sale.

So I spoke to Carl because they would be watching me all the time, you know, to make sure that they couldn't do anything to me.

So I went over to the club, and I took a package --

Q Of what?

A Of heroin, and --

Q How much did you take?

A One kilo.

Q When you took it from the club, where did you take it to?

A To the subway station at 14th Street.

Q Is that the one near Eighth Avenue?

A Yes, sir.

MR. COSTELLO: Objection to continual leading, your Honor.

A That is 14th Street and Eighth Avenue, and I

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put it in a locker.

Q Inside a locker?

A Inside a locker.

Q And what did you do?

A Then I walked -- I went away. I went to Cafe Madrid and when I got to the Cafe Madrid this Jimmy the Greek, the same couple, they were sitting there, and Frankie told me they had no money, so when he told me they had no money I told them I wouldn't give them the package, I wouldn't tell them where it was, so I walked away, and when I walked away I saw Carl -- I met him some place on 14th Street and then we got in the car -- I know I spoke to Carl, to Joe and to Pete, and I told them that it was off, and, you know, we are arguing and things like that because they didn't like the idea of waiting, there was too much risk -- anything could happen.

So I walked away and I come back the next day -- it was the night -- that day -- the next day I went down the subway station and I put more money in the locker, just to make sure because it was for 24 hours. So I went to the Cafe Madrid. Jimmy the Greek was there, this girl was there. Frankie took me over to the kitchen and he showed me the package with the money and he told me there was $1000 missing but he would be responsible for it.

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So I told him where it was. I gave him the key and I went back to the bar.

THE COURT: Went back to the bar?

THE WITNESS: To the bar, yes.

THE COURT: All right.

A (Continuing) Frankie went over to Jimmy the Greek and the girl and spoke to them, and Jimmy left, and the same thing -- a few minutes later the phone rang, and Frankie answered the telephone, went over to the girl. The girl went to the telephone and she left -- well, I don't know whether she left or I left first. I went over to the kitchen and Frankie gave me money. I took the money in the bag, got into my car and took it over to an apartment on the East Side.

Q To where?

A To an apartment on the East Side.

THE COURT: To an apartment on the East Side?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

A (Continuing) So then I put underneath the bed and I left because nobody was watching -- Carl and Joe and Pete weren't around, so I left.

The next day or so, or a couple of days later it could have been, Frankie called me and told me that he

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had another buyer but he did not know when the deal was going to go through.

So that night I went into Cafe Madrid and Frankie told me he had it set for the other sale.

Q When?

A Right then and there -- he had the men there, so he pointed out to me a man there.

Q Who was that?

A Joaquin -- Joaquin Nieves -- no, before that -- before that -- before the sale -- before the sale -- the next day after I made the second sale to Jimmy the Greek I got a call from Frankie about 3 or 4 or 5 o'clock, and he told me he had to see me.

So I went over to Cafe Madrid and he told me that his people that I sold him the second kilo to, they wanted to meet me because there was some trouble, and I refused -- I told him I don't want to meet them because the agreement is I will not meet any of these people, I will have no relation with them.

MR. SCHWARTZ: Your Honor, may I move at this time to strike out all the references to Mr. Nieves, because the witness has obviously changed his mind.

THE COURT: Denied.

MR. FELD: Your Honor, I think the witness will

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testify --

MR. COSTELLO: I object to these characterizations again by Mr. Feld.

THE COURT: Sustained. Let us go on. Next question.

Q All right. Mr. Ramos said they wanted to talk to you about the drugs?

A Yes. I told him I did not want to meet them because that was the agreement.

So finally he said I had to meet them because there was some trouble with the package that I sold.

So we decided for that night. When I went over that night to Cafe Madrid, there I met Jimmy the Greek and another man, a dark-complexioned fellow, tall, skinny, and Frankie Ramos and myself.

THE COURT: What was the name of the tall, skinny man?

THE WITNESS: I don't recall the name, your Honor.

THE COURT: Was he the same man that appeared on the motorcycle with the black jacket?

THE WITNESS: No, your Honor. When I was introduced to him they told me he was the boss for Jimmy -- he was the one that was buying the merchandise.

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A (Continuing) So they told me the package I had sold them, somebody had opened it and put something inside like to cut it but they didn't have time to mix it, so it was like a bundle there.

So I told them it couldn't be from me, because nobody but me touched the merchandise and it had to be the same. So then he started arguing with Jimmy the Greek and fighting, that maybe he had done it. I told him it had nothing to do with me.

So then he gave me his phone number and told me if I have anything else to call him direct and to forget about Jimmy.

I took the number. I gave that number to Carl, but then I don't know what happened to the number.

Q Did you ever see Jimmy the Greek again?

A Yes, practically every day I used to go to the Cafe Madrid, and everytime I was there I saw him there. He wanted to buy from me whatever I had, that he will give me more money than Frankie and to forget about Frankie, and I told him I didn't have anything, if I had it Iwill let him know, because I didn't want to deal direct with anybody. I didn't like it this way, so a few days went by and Frankie called me and he told me he had arranged for the third sale of the heroin, and I went over to the -- he said he didn't

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know when.

So that night I went over to him and when I walked in he told me he had arranged to sell the third kilogram, that everything was set.

I told him it was no good, I needed time to prepare those things, I just wouldn't do it like that.

So he said, "Well, the money is here and the people" -- and he pointed out ~~Jimmy~~ JOACHIM (MIKE) and three women.

MR. SCHWARTZ: Your Honor, may I have a continuing objection?

THE COURT: Yes, you may have a continuing objection.

A (Continuing) So he insisted and I said I would see what I could do, and Iwent over to the telephone and I tried calling Carl but I couldn't get in touch with him, so I took it on my own. I went over to the club. I went to the basement and I took the third kilogram and I put it underneath the seat of my car.

I went over to the Cafe Madrid and I parked in front of the Cafe Madrid -- I made a U-turn so I could see from inside where the car was, and I took the package and I put it on the driver's side, and I locked all the other doors. I only left the driver's side open -- that would be on the street side,not on the sidewalk.

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(Answer continued) So I told Frankie what it was --

Q You went into the Cafe Madrid?

A Yes, I went into the Cafe Madrid and I told Frankie that the package was in the front seat of the car, the driver's side, the street side. So Frankie went and talked to Joaquin. Joaquin went out. He had a newspaper under his arm and he got to the car. He looked around, opened the door, he took the package and put it inside the newspaper, like folded it in underneath his arm. He went to the Cafe Madrid, gave it to the girls, to one of them, and the girls left. I don't know whether Joaquin left or he stood there. That I don't recall.

Q What did you do?

A I went there and I took the money?

THE COURT: Who gave you the money?

THE WITNESS: Frankie. The money was in the kitchen all the time. So I went there. He gave me the money and I went out. I went to the appointment. I took all the money I had there, $12,000 and this other 11 and -- no, and this other 12 because Frankie had given me already the thousand dollars.

Q You had $24,000?

A I had $24,000 and I put in separate bags, brown paper bags, the ones from the grocery store, and I went over

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to my house.

THE COURT: With the money?

THE WITNESS: With the money. I put it away and a couple of days later when I saw Carl I told him I had the money. We an appointment to meet and we met in my car and I gave each of them the one envelope with the money.

Q Who was there?

A There was Carl, Joe Novoa and Pete Daly.

MR. COSTELLO: What time and date.

Q How much money did you give them?

THE COURT: Yes.

A This was the daytime.

THE COURT: That is a continual instruction. It is not possible always to identify it.

Q Was it during the day?

A This was the daytime.

MR. COSTELLO. Objection to the leading again. He is trying to testify for the witness.

THE COURT: Overruled.

A This was daytime and I think it was in 13 Street right by the Maritime Union where we met, the three of us, where we met.

Q How much money did each of you receive?

A $6,000 apiece. I had mine already.

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Q Did there come a time when Frank Ramos introduced you to a man named Lorenzo?

A Well, this was during that period. I think it was after the sale of the third kilogram he introduced me to Lorenzo and he said he was a nice guy, that he wanted to meet me and we talked. He kept insisting that I should give him some cocaine for sale, because he needed the money.

Q Where was this discussion?

A In the club, in the Cafe Madrid. So I told him if he had no money I couldn't sell him anything.

But a few days went by and he kept insisting, so he told me he had a car, that he would give me collateral and he would give me a thousand dollars. So I told him finally, I decided, all right, I'll give him half a kilo. So I went to the club. I don't know how I gave it to him. I know I split one kilo and I made sort of a balance with a piece of board and two strings. I made sort of a balance there and I took a half and I brought over to Cafe Madrid, but this time nobody was watching me because they were on vacation and I was doing this on my own, because they had told me not to do any more sales until they come back because they were on vacation, they weren't going to be around.

THE COURT: Who is "they"?

THE WITNESS: My brother-in-law, Carl, and Joe and

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Pete.

THE COURT: And you say at the time when you were dealing with this half kilo Joe and Pete and Carl were away?

THE WITNESS: Yes, sir.

THE COURT: And they told you not to sell --

THE WITNESS: Not to sell anything.

THE COURT: While they were gone?

THE WITNESS: Yes.

Q When did they tell that to you?

A This was in the car when we were on 13th Street.

MR. COSTELLO: The date, your Honor?

THE COURT: Overruled.

Q Now, could youtell us how this half of kilo transaction was consummated?

A I gave this half kilo to Frankie and Frankie -- I don't know how he gave it to Lorenzo, but the next day he had given -- he gave me the $4,500, so a day or so later Lorenzo kept talking to me, so I decided to give him another half kilo and so I went over and I took another package, and I gave it to Lorenzo, but I was nervous and I made a mistake. Instead of giving half a kilo I gave him one kilo. When I went back the basement I saw I only had half a kilo left then. That is when I remembered. I went over looking for Lorenzo. I couldn't find him. I tried to reach him at the hotel we

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were staying and I couldn't get in touch with him.

So, the next day when I walked into the Cafe Madrid I found Lorenzo there. He came over to me and before I said anything he told me I had made a mistake. I had given him one kilo instead of half. So I told him, "All right, I'll give you" -- I'll give him the other half because I wanted to finish everything. I was very scared at that time. So I went for the other half a kilo and I gave it to him. I don't know how it was, the transaction, but at that time I was very, very nervous, very, very scared.

MR. STONE: I object to the witness characterizing his own nervousness and I ask that it be stricken.

THE COURT: Yes. Just tell us what you said and did.

All right, let's go on.

A I took the money.

Q Did he pay you then?

A Well, he kept paying me a little bit at a time. Like one time he gave me $6,000 and another time he gave me a couple of thousand. You know, different ways until he almost paid me. He almost paid me. It was a little balance left.

Q How much was the total amount of money that you got?

A The total amount was supposed to be $18,000.

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THE COURT: Two kilos of cocaine?

THE WITNESS: Yes.

THE COURT: Sold to Lorenzo?

THE WITNESS: Yes, sir. So I took -- yes, sir. So I took that money. I took it to my house. I hid it there and I would go to the bank and change that money to big bills, 50's or hundreds so it didn't make too much of a -- you know, it wouldn't be a big bundle. So I gave each one of them -- when they come back from vacation Carl called me and I told him I had everything and he got angry with me because I had sold it without permission. So I explained the reason why I had sold it. So then we met and I met with Joe and with Carl.

MR. COSTELLO: Time and date,your Honor.

THE COURT: Yes.

A That I don't recall.

Q What time of day was it, approximately?

A This was the daytime. This was maybe 5, 6 o'clock, around that area.

MR. COSTELLO: Day of the week and --

THE COURT: Do you know the day of the week?

THE WITNESS: It is four years ago, your Honor. I don't recall.

THE COURT: He doesn't know the day of the week.

How long were these three men on vacation?

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THE WITNESS: I don't recall that.

THE COURT: Was it a week, two weeks?

THE WITNESS: Roughly, about that.

THE COURT: So when they came back it was two weeks, about, since they had been away; is that it?

THE WITNESS: About that.

THE COURT: All right. Did you finally get the $18,000?

THE WITNESS: Well, it was a balance left. It was maybe $300 or $400 left that they still owed me that I never collected. But I gave each one of them their money because that was my responsibility and that --

THE COURT: You gave Novoa and Daly and Carl?

THE WITNESS: No, your Honor.

MR. COSTELLO: Objection to your Honor's statement.

THE COURT: I beg your pardon?

MR. COSTELLO: I object to your Honor's statement about Detective Novoa.

THE COURT: I am asking him. He can correct it.

THE WITNESS: No, your Honor, I didn't give the -- I gave $4,500 to Carl. I gave $4,500 to Joe and the other $4,500 I gave to Carl to give to Pete because Pete wasn't there.

THE COURT: So you gave $4,500 to Novoa?

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THE WITNESS: Yes.

THE COURT: $4,500 to Carl for himself?

THE WITNESS: Right.

THE COURT: And $4,500 to Carl to give to Pete?

THE WITNESS: Yes, sir, Pete Daly.

THE COURT: All right.

THE WITNESS: Yes, sir, your Honor.

So that was the end of the transaction.

MR. FELD: May we have this marked as Government Exhibit 1 for identification?

xxx (Government Exhibit 1 marked for identification.)

Q Mr. Boutureira, take a look at Government Exhibit 1 for identification and tell us whether you recognize the person in that photograph?

A Yes, sir, that is the girl that was with Jimmy the Greek.

THE COURT: That is Elissa?

THE WITNESS: Yes, your Honor.

THE COURT: Is this being offered?

MR. FELD: Yes, your Honor. The government offers 1 for identification. Any objection?

MR. COSTELLO: Yes, Detective Novoa objects on the ground that it is not connected with him in any way and has no bearing in regard to Detective Novoa.

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THE COURT: Overruled. Mark it.

(Government's Exhibit 1 received in evidence.)

MR. COSTELLO: Would you note my continuing objection, your Honor?

THE COURT: Of course.

MR. COSTELLO: Thank you, sir.

THE COURT: All right.

Q Mr. Boutureira, yesterday morning you appeared in this courtroom; right?

A Yes, sir.

Q Did you plead guilty to a charge to conspiracy to sell and distribute narcotic drugs not in or from the original stamped package?

A Yes, sir.

Q Before Judge Wyatt; is that correct?

A Beg your pardon?

Q Before Judge Wyatt?

A Yes.

Q When are you going to be sentenced?

A June 27 that will be.

Q Do you know what the penalty for that crime is?

A Yes.

Q What is it?

A I understand it is anywheres between two and ten

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years and it could be a $10,000 fine, and that the judge had the alternative to give me whatever he wants. If he wants to suspend sentence because I tell the truth and I cooperated --

Q In connection with your case, what has the government said it will do?

A The only thing they say is that they say if I say the truth and everything they would recommend -- not recommend, like mention it. How can I say that? It was no promise made. There was no promise made, just that I -- they recommend, like, to have this in consideration, that I tell the truth.

Q And to tell that to the judge?

A Yes.

MR. FELD: Your Honor, may we pass Government Exhibit 1 to the jury?

THE COURT: All right, just give it to Madam Foreman and then the jurors can see it in the front row and then back in the second row and the clerk will get it.

MR. FELD: Your Honor, I have no further quesions.

THE COURT: All right, Mr. Costello.

MR. COSTELLO: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. COSTELLO:

Q Mr. Boutureira, I am going to ask you some questions. You may look anywhere you want, but would you mind looking at

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the jury when you answer?

THE COURT: If you want instructions given to the witness, apply to me for the instructions. You simple ask questions and give no instructions to the jury or to the witness.

MR. COSTELLO: Would your Honor request or direct the witness to look at the jury when he answers the question?

THE COURT: No, I will not.

MR. COSTELLO: You know --

THE COURT: I have never heard such a request in my years of practicing law or inmy years as a judge. It is wholly out of order. Now let's go on.

-3 Q You told the jury that yesterday you plead guilty; is that correct?

A Yes, sir.

Q And you plead guilty before Judge Wyatt in this courtroom; isn't that correct?

A Yes, sir.

Q And you were standing approximately at this point at counsel table with your attorney; is that correct?

A Well, I was at that table, yes.

Q Who was your attorney?

A I don't remember his name. I got --

Q You don't know his name?

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MR. GIULIANI: I am not quite sure what Mr. Costello wants. I stated if we had them we would turn them over.

THE COURT: What is it?

MR. COSTELLO: Your Honor, there are two items -- the UF16 memorandum books kept by Detective Novoa as a member of the Special Narcotics team.

Is it my understanding that he was assigned a memo book together with a number by his superior officer, which contained all of the dates of his various activities. When that memo book was filled up he turned it in to his superior officer. He was given, as I understand it, another number --

Is that right?

DEFENDANT NOVOA: A new book.

MR. COSTELLO: A new book, and at the conclusion of the calendar year all of these memo books of Detective Novoa --

MR. GIULIANI: Your Honor, we do not have the Police Department's files.

THE COURT: The government says they do not have that.

MR. GIULIANI: Which year do you want?

MR. COSTELLO: 1970. I understand that all

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of Detective Novoa's books for the calendar year 1970 are then assigned to a folder No. 54 of 1970.

THE COURT: The government says it doesn't have that.

MR. GIULIANI: Your Honor, it could be subpoenaed by Mr. Costello if he wants it from the New York City Police Department.

THE COURT: Of course, I understand that, but that is the problem we are dealing with now. They say they do not have it.

MR. COSTELLO: Well, I made the application --

MR. GIULIANI: May I --

MR. COSTELLO: Well, Mr. Giuliani --

MR. GIULIANI: Mr. Costello, let me finish, without you making a speech.

Your Honor, we have one memo book of Mr. Novoa which I subpoenaed from the Police Department, which I subpoenaed for the trial, and if he wants to examine it I am willing to let him take a look at it.

THE COURT: Do you have it here?

MR. GIULIANI: Well, I may have it in my office.

THE COURT: All right, see if you can find it.

MR. COSTELLO: Within that context, your Honor,

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it is my understanding from what Detective Novoa has told me that he saw that file folder together, presumptively with all the memo books, on the desk of Mr. Puccio in the Eastern District.

MR. GIULIANI: Could we take one thing at a time, your Honor. I have the memo book -- one memo book. The rest are available at the Police Department.

THE COURT: And you got it from the Police Department, and you are making it available to Mr. Costello, and be sure to give it back when you are finished with it.

MR. COSTELLO: Yes, sir.

MR. GIULIANI: I will hand it to Mr. Costello right now -- may the record reflect that (handing).

MR. COSTELLO: Thank you.

THE COURT: Apparently that is all we can do.

MR. SCHWARTZ: Your Honor, could you just sit a method of operation that when 3500 material comes up, as it did, perhaps we can do it at the side bar and not in the presence of the jury. It is not fair to either side.

THE COURT: I generally prefer it at the side bar, I agree. Let us take it up right now.

MR. GIULIANI: And the government does, too.

MR. SCHWARTZ: It isn't a question of "right now." It is a question to try to set the stage for what

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might happen in the future.

THE COURT: Now this material that we have just talked about is not 3500.

MR. GIULIANI: That is correct.

THE COURT: This is something entirely different, but we have dealt with the present subject.

What is it you want me to do about 3500 material?

MR. SCHWARTZ: I think perhaps, your Honor, you could issue an order that will stand throughout the trial that the government be required to supply whatever 3500 material they have as each particular witness is called to the stand. It certainly makes it easier, and that will certainly speed up whatever cross-examination we have.

THE COURT: I agree, but, Mr. Schwartz, I have no power to compel the government to give any 3500 material until after the witness has testified on direct examination.

MR. SCHWARTZ: I understand.

THE COURT: I suggest strongly that it be done earlier, in the interests of saving time.

MR. SCHWARTZ: Thank you.

THE COURT: And I do think that both sides ought to follow the rule of dealing with 3500 material out

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of the presence of the jury -- I quite agree with that. I thought we were doing it that way.

Mr. Stone?

MR. STONE: Your Honor, I think it is fair to caution Mr. Costello that if he questions -- I do not know what is in these memo books, but there is a possibility that the other defendants could be referred to in the memo books in a prejudicial way -- I don't know if that is so or not. I certainly would not want any material brought out in that memo book referring to my client as having a record or being a suspect or anything in that sense.

THE COURT: I take it, Mr. Costello, you are only interested in your cross-examination on Mr. Novoa himself?

MR. COSTELLO: Yes, your Honor.

THE COURT: So having heard Mr. Stone's statement, may I now assume that you will be governed accordingly?

MR. COSTELLO: Your Honor, I of course would answer it this way: my primary duty is to Detective Novoa. Mr. Stone's primary duty is to his client. If the interests of justice -- if within the context of the applicable law on cross-examination or direct examination I have to elicit information which might be prejudicial to either one of the defendants at the bar, it is most un-

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fortunate, and I anticipated that possibility, and that is one of the reasons that I moved timely for a notice of severance. I sincerely hope that I do not do anything which offends Mr. Stone, whom I respect professionally and like personally, but my primary duty is to Detective Novoa, and I am going to fulfill that duty to the best of my ability.

MR. STONE: The only thing I ask is before anything is introduced, your Honor, that we discuss it at the side bar where, if my objection is valid, he might not be able to introduce it. If it is not valid, it will give you an opportunity to rule on it.

I do not know if there is anything in there that will be prejudicial, but in this type of case I think you may anticipate that situation.

THE COURT: Well, I see no reason for counsel for Novoa to question this witness about anything relating to Papadakis and the evidence in these books, and until I am shown to the contrary that will be my ruling.

MR. SCHWARTZ: May we also have the opportunity to examine the book?

MR. GIULIANI: I have no objection. They can all examine it.

THE COURT: All right.

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JUROR NO. 8: No.

JUROR NO. 4: No.

THE COURT: All right. May I suggest that you three ladies and gentlemen keep that to yourselves and don't discuss it with anybody else. Do you understand?

JURORS: Yes.

THE COURT: Thank you.

All right, the government will call the next witness.

MR. GIULIANI: The government calls Carl Aguiluz.

C A R L A G U I L U Z, called as a witness by the government, being first duly sworn, testified as follows:

MR. GIULIANI: Your Honor?

THE COURT: Yes, Mr. Giuliani.

DIRECT EXAMINATION

BY MR. GIULIANI:

Q Mr. Aguiluz, how old are you?

A 38.

Q Are you married?

A Yes, sir.

Q How are you employed?

A I am presently employed with the New York City

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Police Department.

Q When did you first join the New York City Police Department?

A October 1, 1964.

Q Mr. Aguiluz, would you keep your voice up?

A Yes, sir.

Q So that all the jurors and everyone in the courtroom can hear you.

A Yes, sir.

Q Can you tell us briefly, prior to the year 1970, or up to the year 1970, what you did in the New York City Police Department?

A From October the 1st, 1964, to June of '65, I was assigned to the Intelligence Division of the Police Department doing undercover work in the field of criminal activities.

MR. SCHWARTZ: Your Honor, I have to join in Mr. Giuliani's request. I cannot hear him.

THE COURT: Mr. Aguiluz, this is a very difficult room in which to hear. It has a high ceiling and probably the acoustics are bad anyway, so having in mind that we have ladies and gentlemen in the jury who are at the farther end of the jury box from you, and having in mind that you have defendants' counsel sitting at the back table, please

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try to keep your voice up.

THE WITNESS: I will try, sir.

THE COURT: You have to speak up loudly so that everybody can hear you.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q And after that, Detective Aguiluz, what did you do?

A From June of '65 to March of '68 I was assigned to the Bureau of Special Services doing undercover work with militant groups in New York City.

Q And after that?

A From March of '68 to December of '68 I was assigned to the Police Academy.

Q And in December of 1968?

A I was assigned to the Narcotics Division of the New York City Police Department.

Q Did there come a time when you were assigned to a unit known as SIU?

A Yes, sir.

Q When was that?

A That was June of 1969.

Q And how long were you assigned to SIU?

A To June of '72.

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Q Can you tell us what SIU is?

A SIU is an elite unit within the Narcotics Division of the Police Department, assigned to investigate heavy traffic in narcotics in New York.

Q What is the official standing?

A Special Investigation Unit.

THE COURT: Did I understand you to use the word "elite"?

THE WITNESS: Yes.

THE COURT: The SIU was, and you described it an elite unit?

THE WITNESS: An elite force of detectives within the Narcotics Division.

Q How was the SIU organized?

A We had a commanding officer -- a Captain; a Deputy commanding officer, a Lieutenant; several Sergeants. Below the Sergeants we had teams of detectives.

Q How many detectives in each team?

A It varied -- between two and five detectives.

Q When you were with the SIU did you work with a detective named Joseph Novoa?

A I did, sir.

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Q And do you know when he joined the unit?

A To my recollection it was the same time that I joined -- that was June of '69.

Q And do you see Detective Novoa in the courtroom?

A Yes, I do.

Q Can you tell me where you see him?

A Right there (indicating.)

Q Would you tell us --

MR. GIULIANI: Would you concede the identification?

MR. COSTELLO: So stipulated, yes.

THE COURT: All right, the identification is conceded.

Q Do you also know a detective named Peter Daly?

A Yes, I did.

Q And did you work with him when you were with the SIU?

A I did, sir.

MR. GIULIANI: May I have this picture marked as Government's Exhibit 2 for identification.

xx (Marked Government's Exhibit 2 for identification.)

BY MR. GIULIANI:

Q I show you, Detective Aquiluz, what has been marked as Government Exhibit 2 for identification and ask you if that is a picture of Peter Daly (handing)?

A It is, sir.

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MR. GIULIANI: The government offers 2 for identification into evidence, as Government Exhibit 2.

MR. COSTELLO: No objection, your Honor.

THE COURT: All right, without objection it will be received. Mark it.

(Mark Government's Exhibit 2 in evidence.)

BY MR. GIULIANI:

Q Did you work in a team with Detective Novoa and Detective Daly?

A I did, sir.

Q And for how long a period of time?

A The best estimate I could give would be from the early part of '70 to the latter part of '70.

MR. SCHWARTZ: I'm sorry, your Honor, he dropped his voice.

(Answer read by the reporter.)

THE COURT: Try to speak a little louder.

THE WITNESS: I will try.

Q When was the first time that you began working with Detective Novoa?

A I recollect late February of '69 -- or '70, correctio

Q Had you worked with him previously?

A Yes, sir.

Q Directing your attention to the evening of April 14,

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1970 were you on the evening of that date working with Novoa and Daly?

A I was.

Q And can you tell us where you were?

A I was working in the area of 14th Street and 7th Avenue.

Q Were you in a car?

A My car, yes.

Q All three of you in a car?

A Yes, sir.

Q Did there come a time when you made an observation?

A Yes, sir.

Q Will you tell us what you observed?

A I observed a white Galaxy Ford proceeding south on 7th Avenue bearing Florida license plates.

Q And did you have any discussion or do anything as a result of that observation?

A We placed the vehicle under observation.

Q When you say "we" who are you referring to?

A Myself, Detectives Novoa and Daly.

Q What else happened?

A We ultimated observed the vehicle come to a stop at the southwest corner of 14th Street and 7th, containing four individuals, one of whom was a female.

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MR. COSTELLO: I cannot hear him.

(Answer read.)

Q Did you subsequently identify those four individuals?

A Yes, we did.

Q Can you tell us their names?

A Elena Rizzo, Emilio Gonzales, Jose Mulas and Jorge Arraya.

Q Tell us, Mr. Aguiluz, what else you observed?

A We observed, as I stated before, the car came to a stop at the southwest corner of 14th Street containing four individuals. Subsequently we observed two of the individuals leave the car and proceeding to a restaurant on 14th Street.

Q What restaurant.

A The Ovedo Restaurant.

Q Go ahead, what else did you observe.

A Further observed that one of the individuals that went up to the restaurant tapped on the window, and after a few seconds a male emerged, was engaged in conversation. At the conclusion of that conversation the two individuals that left the car initially returned back to the car.

Q Any further observation?

A Yes. At the time when we continued the observation we decided to tail the car.

Q Did you have a conversation about that?

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A Yes, between myself and Novoa and Daly.

Q And did you follow the car?

A We did.

Q Tell us where you followed the car?

A We followed the car down 7th Avenue to an area in the vicinity of Grove Street and 7th Avenue.

Q Then what did you do?

A We observed two of the individuals in the car again leave the car, and went into a delicatessen. At this time the tail was combined between my car and Daly's car.

Q What do you mean by "the tail was combined"? Will you explain that.

A Well, there were two vehicles used in the tail.

Q Your vehicle was one of them?

A Yes.

Q Who was in your vehicle?

A Myself and Detective Novoa.

Q And the other vehicle?

A Daly's car contained Daly.

Q What happened at the delicatessen?

A Some few minutes after the individuals went into the delicatessen, Novoa and Daly followed them into the store. Approximately a few minutes later Detective Novoa returned to my car and informed me that there was conversation between the

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two individuals inside the store to the effect that "Don't buy any bread. We have bread back at the apartment."

MR. SCHWARTZ: Is this all taken subject to connection, subject to the continuing objection?

THE COURT: Yes, Mr. Schwartz.

MR. SCHWARTZ: Thank you.

MR. COSTELLO: Your Honor, would you direct the witness to keep his voice up, please. I am getting every other word.

THE COURT: Yes, I agree, although I have asked the witness to do it. Please try to remember, Mr. Aguiluz, you have to speak in a loud voice.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q What happened after this incident in the delicatessen

A I -- we observed those individuals returned to their car, and the tail was at once established again on them.

Q And where did you follow them?

A We followed them into the West Side Drive, proceeding northerly.

Q Tell us what else happened.

A There came a time when they came to the George Washington Bridge and went across the bridge. The tail was maintained across the bridge.

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Q And did you go anywhere after you left the George Washington Bridge? Where did you follow them?

A Yes. After paying the toll on the George Washington Bridge they proceeded in the immediate vicinity of Fort Lee, New Jersey.

Q What occurred there?

A After some time, following these individuals in the vicinity of Fort Lee, it was apparent to us that the tail --

MR. SCHWARTZ: Objection.

THE COURT: Well, just tell us what you did and saw. Go ahead.

A What I did and saw was that their -- I was aware that the tail had been made and --

MR. SCHWARTZ: I object to what he was aware of.

Q Just tell us what happened next, Detective Aguiluz. What is the next thing that occurred?

A There came a time where we stopped the individuals on the street in Fort Lee, and I asked them to identify themselves.

Q Had any other patrol arrived?

A Yes. After a few minutes on the street two local sector cars arrived on the scene.

Q What do you mean by "local sector cars"?

A Local police cars.

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Q And what occurred after you stopped the individuals? Just tell us what happened?

A I recall that the reason for stopping them in the first place was --

Q Well, don't tell us the reasons. Just tell us what happened.

A After sometime on the street, at the request of the local P.D., we removed ourselves from the street and proceeded to a parking lot of a motel.

Q What occurred?

A At the motel we attempted to search the vehicle and also to further identify the occupants of the vehicle.

Q What did you do?

A I recall that -- the next recollection that I have is that the motel owner came out on the veranda of the motel and informed us that the people, the occupants of that car were staying at their motel.

Q And what did you do as a result -- what did you, Novoa or Daly do as a result of it?

A There came a time when the detective Novoa and myself went into the motel in an attempt to locate a room allegedly belonging to the occupants of the vehicle.

Q And did it belong to them?

A No, sir.

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Q Tell us what else happened?

A I recall that there came a time where Detective Novoa and myself entered the vehicle containing the four occupants, followed by Detective Daly in his car and proceeded to New York City.

Q And what occurred when you arrived back in New York City?

A I recall that Emilio Gonzales informed us that he resided in New York, in the vicinity of 18th Street on the west side. After a time I recall that in an attempt to locate his premises and after some futile half dozen attempts, in an area of Grove Street and 7th Avenue, once again we stopped the car.

Q And what happened when the car was stopped?

A I exited from the occupants' vehicle and proceeded to Detective Daly's car to inform him that I had decided to once again identify these individuals to the best of my ability.

Q And what did you do?

A I went back to the vehicle containing the four occupants, plus Detective Novoa and I asked Gonzales for his identification papers once again.

Q And what did Gonzales do?

A He handed me a portfolio containing three passports

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three different passports from different countries.

Q When you say "three different passports",what do you mean?

A I mean that he had three passports from different countries containing his picture and different signatures.

Q You mean different names?

A Different names, yes.

Q Did you say anything as a result of that or do anything?

A After observing the papers I informed Gonzales that he was being arrested for falsifying an official document.

Q What happened next?

A The next recollection I have -- that I had was that Detective Daly informed us that there was a gun underneath the front seat.

Q Tell us how that conversation occurred?

A I recall that I initiated the conversation --

MR. COSTELLO: Your Honor, I cannot hear him.

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THE COURT: A little louder.

A I recall that I initiated the conversation to the effect that the arrest, because of my inexperience involving official documents, I wasn't sure if his arrest would hold -- whether it was a valid arrest.

Q Who were you discussing this with?

A With Detectives Novoa and Daly.

Q Go ahead.

A And I also recall at that time that Detective Daly winked at me and informed me that there was a gun underneath the front seat of the car.

Q What occurred next?

A My next recollection I have, we proceeded to the 6th Precinct with the four individuals under arrest.

Q When you arrived at the 6th Precinct -- first will you tell us where that is located?

A At that time it was located off Hudson Street and Charles Street.

Q When you arrived at the 6th Precinct, Detective Aguiluz, what occurred?

A We proceeded directly to the Detectives Squad Room.

Q And what happened there?

A As I recall the three males reported to a

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detention cell.

MR. COSTELLO: I really cannot hear him.

(Answer read.)

A (Continuing) And the female was allowed to remain outside the cell in consideration that, to my recollection, she stated she was pregnant.

Q Tell us what else happened in this room.

A There came a time when Gonzales called me over to the cell. In the meantime we had occupied ourselves in the processing of the prisoners, and at some time Gonzales called me over to the cell and told me that I stole $100 off him.

Q What did you say to him?

A I was very indignant about it, and I asked him to come out of the cell and show me exactly where I had removed the $100 or stolen the $100 from him, and I walked over to a desk where we had previously put all the personal papers belonging to the defendants, and I proceeded to ask him in what papers he had $100. He picked up his portfolio containing the three passports, and there came a time when he was paging through the passports, and at some point, a few seconds later, he pushed me and pushed Detective Novoa and proceeded to a corner of the room and put a piece of paper in his mouth and proceeded to eat it.

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Q What did you and Detective Novoa do?

A Detective Novoa and myself went over to the corner where the individual was eating the paper and attempted to extract the paper,and I recall that Detective Novoa attempted to remove the paper and was pushed off.

Q What if anything else occurred?

A Yes. I recollect that Detective Daly had come over to assist us, and at that time he proceeded to kick the defendant in the throat in an attempt to remove the paper.

Q What occurred after that?

A I recall that while being occupied with Gonzales, the female who remained out of the cell. proceeded to a desk with the papers,where all the personal papers were laid out and she proceeded to rip up the papers on top of the desk.

Q What happened after that?

A The next recollection I have is that we established order in the Squad Room, and once again put Emilio Gonzales back into the detention cell, and we cuffed the female still outside the cell to one of the far detention cells.

THE COURT: I beg your pardon, what did you do?

THE WITNESS: We put Emilio Gonzales back in the cell, your Honor, and cuffed the female.

THE COURT: "Cuffed the female" -- put handcuffs

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on her?

THE WITNESS: Yes, sir.

THE COURT: You say you handcuffed her to the bar of the detention cell?

THE WITNESS: Yes, there was a bar there, to my recollection.

THE COURT: All right.

Q What occurred next?

A My next recollection is that Emilio Gonzales with the two other males in the cage and the female in conversation, and I do overhear that Emilio tells them that "The cargo is safe and we are not going to suffer any loss."

Q Was that spoken in Spanish?

A Yes, it was.

Q Do you speak Spanish?

A Yes, sir.

Q Does Detective Novoa speak Spanish?

A Not as well as I do, but he does, yes, sir.

Q Will you tell the Court what occurred next?

A My next recollection is that Detective Novoa and myself proceeded to investigate what paper Gonzales had swallowed.

After paging through all the remaining papers that weren't affected, that weren't ripped up, we ascertained

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that the paper that he had swallowed contained an address of 210 West 19th Street, Apartment 4-F.

Q When you say you "ascertained," what do you mean by that?

A We ascertained that by process of elimination with the remaining papers that were on the top of the desk.

Q Had you seen those papers before?

A I had seen them a couple of times before, yes, sir.

Q Will you tell us as you recall, Detective Aguiluz, what was seized from the defendant that was on the desk?

A Up to that point I recollect that we had seized various personal papers, passports, and approximately 15 to 30 keys, locks.

Q Any money?

A Yes, approximately $1200.

Q Will you tell us, did you, Novoa and Daly have any further conversation in the Squad Room?

A Yes. After we established what address the paper contained, Detective Novoa remained in the Squad Room guarding the persons, and Detective Daly and myself proceeded to 210 West 19th Street.

Q Will you tell us as best you recall approximately

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at what time in the evening or morning we are talking about?

A We are talking about the early morning hours of the 15th of April.

Q Did you arrive at 210 West 19th Street?

A Yes, we did.

Q And what did you and Daly do?

A Upon arriving at 19th Street, myself and Detective Daly proceeded to try every key that we had removed from the defendants on the locks --

MR. SCHWARTZ: I am sorry, I cannot hear him.

(Answer read.)

Q Go ahead; what happened?

A There came a time when we opened the first street door and subsequently the lobby door was opened.

Q After that?

A By process of elimination of each key we proceeded upstairs to the fourth floor, Apartment 4-F, and once again we opened that door.

MR. COSTELLO: If your Honor please, Iobject to all this testimony as it relates to Detective Novoa because admittedly he was not present at the premises.

THE COURT: Overruled.

All right, go ahead.

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Q What happened? Just tell us what happened next.

A After opening the door to Apartment 4-F, Detective Daly and myself proceeded inside the apartment to conduct a search. The search revealed that there were empty suitcases in the apartment and also various passports; also two doors -- two closet doors that were heavily locked.

Q What did you do next?

A My next recollection is that I called the 6th Precinct to get in touch with Detective Novoa.

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Q Did you have a telephone conversation with Detective Novoa?

A I did.

Q Tell us to the best of your recollectim what you said to him and what he said to you?

A The best recollection I have at this time is that I informed Detective Novoa that there was nothing major in the apartment to that point and I informed him about the two closet doors and also I requested that one John Kidd, a Detective, be obtained so we can open the two closet doors, pick the locks.

Q What do you recollect happening next?

A My next recollectinn is that I called Lieutenant John Egan and essentially informed him of what transpired concerning the individuals at 7th Avenue.

Q What is the next event that you recall?

A The arrival of Detective Kidd and also at that time he began the opening of the closet doors.

Q And did he open one of the closet doors?

A Yes. There came a time where he opened the first closet door and it revealed that there was a suitcase inside the closet containing a scale and some residue of narcotics.

Q What happened after that?

A I recall that it was the early morning hours.

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Detective Daly and myself were very tired and we relaxed in the living room of the house, of the apartment, and Detective Kidd continued to open the second door.

Q Approximately how long did it take to open the second door, as you recall?

A The best recollection I have is 20 to 30 minutes.

Q What is the next thing that occurred that you remember?

A I recollect that Detective Kidd woke me up from the living room couch.

Q What did he say to you?

A He told me at that time that, as I recollection his words, that it was a tremendous arrest that we had made and that the close was full of packages.

Q I'm sorry. That the closet was full of --

A Of packages.

Q What did you and/or Daly do as a result?

A The next recollection I have is that myself and Daly went over to the closet and removed packages from the middle of the pile. I recall that I removed the outer wrapping of the package and inside was a plastic bag containing white powder.

Q What did you do?

A Detective Daly, I recollect, proceeded to do the

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same and we proceeded to open more packages and at that time I was convinced that all of the packages in the closet was heroin or cocaine.

Q Did you perform some kind of a test?

A Subsequently we did. We did perform a Marquis test.

Q Can you tell us what the result of that test was?

A Immediately after injecting a part -- we removed part of the substance inside the plastic and we injected into it the Marquis test and it turned dark purple.

Q What did that indicate?

A It indicated at the time the powder, the alleged narcotic was of a high purity.

Q Can you tell us what the closet looked like when you first saw it?

A It looked like two old closet doors.

Q Can you tell us what it looked like inside?

A Inside there was packages stacked from the floor to the ceiling, practically.

Q Can you tell us what you then did?

A We began to remove the packages from the closet and --

THE COURT: That is you and Daly?

THE WITNESS: Myself and Detective Daly.

Q What about Detective Kidd?

A I don't recall exactly what John Kidd's movements

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were after he opened the closet door. I lost track of him.

Q Was he with you and Daly as you were removing packages of narcotics?

A To the best recollection I have is that he was somewhere in the vicinity, in the immediate vicinity sometime or other of the time.

Q In the same room?

A Yes, in the same room.

Q What occurred?

A We removed packages from the closet and put them in the suitcases, that we initially found inside the apartment.

Q Tell us what else happened.

A Some way between the removal of the packages in the closet, approximately halfway, Detective Daly told me that he wanted to take five packages and put them inside of a suitcase.

Q What did you say?

A I said "good, fine."

I also recall that he used the term that he wanted to retain the narcotics for flaking purposes.

Q Can you tell us what that means?

THE COURT: For what purposes?

THE WITNESS: Flaking.

THE COURT: For flaking purposes, f-l-a-k-i-n-g.

MR. GIULIANI: May I respectfully request a side bar

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conference for one moment?

THE COURT: All right.

(At the side bar.)

MR. GIULIANI: Your Honor, throughout the course of the examination of the first two witnesses in this case I have observed on three or four occasions, and so has Mr. Feld, and so has a colleague of mine, that Mr. Novoa has a practice of laughing and commenting to his attorney on the testimony of witnesses. He has just done it three times during the direct examination. Right now during the testimony he was laughing and shaking his head as if to indicate no. I would ask the Court to instruct his counsel that he shouldn't be allowed to do this. If he intends to testify, fine, we should be entitled to cross-examine, but he shouldn't testify shaking his head and making gestures.

THE COURT: I have to allow him to make a statement to his counsel. That I can't stop and wouldn't want to stop. But I do think -- I don't know whether it is true or not -- but whatever it is, Mr. Costello, I think you ought to tell him not to laugh or make any gestures. He is free to talk to you all he wants, but I do think that is a proper instruction.

MR. COSTELLO: All right.

(In open court.)

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THE COURT: Let's go ahead.

Q During this conversation between yourself and Daly, was Detective Kidd present? Was he a part of the conversation?

A No, sir.

Q Tell us what you recall happening next?

A I recall seeing the narcotics removed, some of the packages already inserted into a suitcase. The packages were removed to a quantity of five kilograms of narcotics.

Q When you say a suitcase, was it a large suitcase, a small suitcase?

A To my recollection it was a small brown suitcase.

Q Will you tell us when Detective Novoa arrived.

A I recall that prior to removing the narcotics and placing them in the small suitcase a call was made by me to Detective Novoa at the precinct. I informed him of the arrest we had made and of the narcotics and he stated to me he would be right over.

Q When did he arrive?

A As I recall -- this is a little vague to me -- I don't know exactly if he arrived after Daly removed the narcotics from the apartment and placed them in his car or after that was done, before or after. It is a little vague to me at that point.

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Q Tell us, then, what Detective Daly did with the five packages of narcotics that were placed in the small suitcase.

A After the packages was placed in the suitcase, Detective Daly removed them from the apartment and placed them in the trunk of his car.

Q Before that or after that at sometime did Detective Novoa arrive?

A Yes.

Q Did you have a conversation with Detective Novoa?

A Yes, I recollect that myself and Detective Daly had a conversation with him.

Q Will you tell us what you said and what Detective Daly said and what Detective Novoa said to the best of your recollection?

A I recall that Detective Daly told Detective Novoa that we had taken five packages containing narcotics and I recollect that I did the same.

Q What did Detective Novoa say?

MR. COSTELLO: Can we have a time set?

THE COURT: I suppose this iswhen Novoa came to the apartment?

THE WITNESS: Yes, sir.

THE COURT: Was in the apartment?

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THE WITNESS: Inside the apartment.

THE COURT: That is apartment 4-F, on West 19th Street?

THE WITNESS: That is correct.

THE COURT: All right.

Q Can you tell us what Detective Novoa said in response

A To my recollection he said "fine."

Q What occurred after that?

A The next recollection I have is that a call was placed to Lieutenant Egan once again and he was informed that a large quantity of narcotics was seized.

Q What else occurred.

A I recollect that myself, Detective Novoa and Daly had a conversation where we discussed the possibilities of getting a warrant on the apartment, at 210 West 19th Street in order to tighten up the arrest.

Q What was the result of that conversation?

A Ultimately I recall I left the apartment 4-F and proceeded to the Manhattan DA's office to get a warrant for the premises.

MR. COSTELLO: Can we have a time,your Honor?

THE COURT: Yes. This is April 15, I take it. About what time of day?

THE WITNESS: I departed from the apartment, your

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Honor, approximately 8:45, 9 o'clock in the morning.

Q Did you obtain a warrant?

A Yes, sir. Prior to my departure from the apartment at 19th Street I had placed a call to one Detective Santacruz at his home.

Q Did you obtain a warrant?

A Yes, sir.

Q Did you return to the apartment with the warrant?

A Yes, sir.

Q Approximately, as best you remember it, when did you return to the apartment?

A As I recall, I recollect in the area of 11 o'clock in the morning.

Q What happened when you returned to the apartment?

A When I arrived back at the apartment Detective Novoa and Daly were there along with Sergeant Stefania and Lieutenant Egan.

Q What occurred after that?

A My best recollection is that we waited for the arrival of our superior officers from SIU in the narcotics division.

Q Did there come a time when you were in the apartment that a photograph was taken that included, in part, a photographs of the narcotics that had been seized?

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A I do recollect that, yes.

MR. GIULIANI: May I have this photograph marked as Government Exhibit 3 for identification.

THE COURT: Did I understand you to say that the five packages were put in a brown suitcase and the brown suitcase was put in the back of Daly's car?

THE WITNESS: That is exactly right, sir.

THE COURT: And the rest of the packages were left in theapartment; is that it?

THE WITNESS: Yes.

THE COURT: All right.

(Government Exhibit 3 marked for identification.)

Q I show you what has been marked Government Exhibit 3 for identification and ask you if that is a picture of the narcotics that you left in the apartment and packed into the suitcases that you had found in the apartment?

A Yes, sir.

Q Was that picture taken on April 15, 1970?

A To my knowledge it was, yes, sir.

MR. GIULIANI; Your Honor, the government offers Exhibit 3 for identification in evidence.

MR. COSTELLO: Defendant Novoa has no objection, your Honor.

MR. SCHWARTZ: May we see it, your Honor?

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THE COURT: Of course.

MR. SCHWARTZ: In line with my general standing objection, I continue to object.

THE COURT: All right, it is taken on the same basis. Mark it.

xx (Government Exhibit 3 received in evidence.)

MR. GIULIANI: May I pass it to the jury?

THE COURT: Yes, you just give it to Madam Foreman and then the jury can look at it first in the first row and then back in the second row. All right.

Q Detective Aguiluz, before you used the term flaking and, I'm sorry, but I didn't ask you to tell us what that means. Define it. What does that term mean to you?

A To the best of my knowledge it means that to plant narcotics on an individual.

Q Or anything else?

A Or anything else, yes.

THE COURT: To plant narcotics on an individual; is that it?

THE WITNESS: Plant false evidence on any individual, your Honor. They are subject to arrest.

Q Did there come a time, Detective Aguiluz, when you and Novoa, Daly and other people involved returned to the 6th Precinct?

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A Yes, sir.

Q And can you tell us what occurred at the 6th Precinct when you arrived there?

A Our main activity at the 6th Precinct was the processing of the prisoners and vouchering, preparing the necessary papers for the arrest and any other papers that are necessary when consummating an arrest.

Q Did there come a time when you had a conversation with Novoa and Daly concerning the $1,200 that had been seized from the four subjects?

A Yes. I recollect a conversation to that effect where Detective Novoa stated to me that Sergeant Stefania was insistent on splitting the money that was there, this approximately $1,200. I recall that Detective Novoa was very upset about this and my best recollection that I have is that the money was split and I was handed an amount of money.

Q Did Novoa tell you why he was upset about it?

A Yes. I recollect that he was upset because in the past we had split other money with Sergeant Stefania and that he was upset because of the fact that Stefania was insistent on splitting up such a small amount of money at this time.

Q What occurred?

A As I stated before, I do recall that I received an amount of money, approximately one-fifth of the $1,200 from

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Detecti[illegible] Novoa.

Q That would be approximately $240?

A Approximately, yes.

MR. COSTELLO: May I have the time and date, your Honor?

THE COURT: Yes.

When did Novoa give you the one-fifth of the $1,200? What date was that?

THE WITNESS: That was April 15, 1970, the 6th Precinct.

THE COURT: That was the same day that you had unlocked the apartment on West 19th Street?

THE WITNESS: The same day, and after I returned back to the 6th Precinct with the narcotics, and so forth.

MR. COSTELLO: About what time, your Honor?

THE COURT: Do you remember what time of day Novoa gave you the money?

THE WITNESS: I recollect the afternoon of April 15, your Honor.

THE COURT: The afternoon of April 15. All right, go ahead.

Q Did there come a time when a gentleman by the name of Seely called you at the 6th Precinct?

A I recall that there was a call from Seely. Not to

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me personally, but it was relayed to me by Lieutenant Egan that he had called.

3-3 Q Who is Mr. Seely?

A Mr. Seely was at that time in charge of the hard drug section of the United States Customs area.

Q Did there come a time when certain federal agents came to the 6th Precinct?

A I recall two federal agents from customs did come up to the 6th Precinct.

Q Were the defendants or subjects eventually booked on that day, April 15, 1970?

A To my recollection they were, yes.

THE COURT: You mean these four people that you had followed to Fort Lee and eventually arrested?

THE WITNESS: That is correct, your Honor.

Q Now, directing your attention to sometime within the next week following this arrest, did you have a conversation with Daly and Novoa concerning this valise that Daly had put in his trunk?

A Yes, I recall that approximately a week after the arrest I told Detective Novoa and Daly that I wanted the valise.

Q Was it given to you?

A In fact, they did give it to me and I placed it in

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the trunk of my car.

MR. COSTELLO: Who is alleged to have given the valise?

THE COURT: I beg your pardon?

MR. COSTELLO: Who allegedly gave the valise?

THE COURT: Yes.

Who gave it to you?

THE WITNESS: I recall that it was handed to me by Detective Daly in the presence of Novoa.

THE COURT: Daly physically handed you the valise and when he did it Novoa was there?

THE WITNESS: Yes.

MR. COSTELLO: Can we have a time and date on that?

THE COURT: He says about a week after April 15.

THE WITNESS: Yes. That is the best recollection I have of it.

THE COURT: Where did they give it to you?

THE WITNESS: On the street.

THE COURT: Which street?

THE WITNESS: I don't recall.

THE COURT: In Manhattan?

THE WITNESS: Yes.

THE COURT: On a street in Manhattan.

Q Did there come a time a month or two months after

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the April 15, 1970 seizure when you had a further conversation with Novoa and Daly about this valise?

A Yes, sir. I recall a conversation that took place at the Club Espana on West 14th Street relating to this valise.

Q Could you tell us what you recall was said by you, by Novoa and by Daly?

A I recall that the conversation revolved around the subject of what to do with this valise. I recall that Detective Novoa told me "Maybe we should throw it in the river." At that time I recall that I agreed with him and not exactly who said what, but I recall Daly saying that maybe we ought to think this thing over and perhaps not dump it in the river.

Q What else was said?

A I recall that it was agreed later or Detective Daly wanted to sell the narcotics.

Q What occurred?

A In fact, it was agreed that we would sell the narcotics.

Q When you say agreed, what do you mean? What was said and by whom?

A Well, it was stated by Daly "Let's sell the narcotics. I retaliated by saying "The next thing we have to

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do is find something as a conduit to sell the narcotics."

I also recall saying that I suggested my brother-in-law be used for this purpose.

Q What did Novoa and Daly say to that?

A It was a good idea.

Q Did they both know your brother-in-law?

A Yes, sir.

THE COURT: Is this the same conversation in the Club Espana where the first suggestion was that they throw the valise in the river?

THE WITNESS: Yes, sir.

THE COURT: It is the same conversation?

THE WITNESS: Same conversation.

THE COURT: And in that conversation ultimately you say the three of you decided to sell the narcotics through your brother-in-law?

THE WITNESS: That is correct, your Honor.

THE COURT: All right.

Q Did there come a time when you left that valise at your brother-in-law's house?

A Yes, I did.

Q Approximately how long after this conversation did you do that?

A I don't recall exactly, but I could place it in

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the next few weeks or so following that conversation.

Q Within a week or two?

A Perhaps. I don't recall the time.

3-4 Q Can you tell us what you did?

A As I stated before, I did turn the valise over to my brother-in-law.

Q When you first brought the valise over to his home, was he home?

A No, he was not home. I left the valise at his home and proceeded to 14th Street where I ultimately made contact with him. The conversation at the time -- I stated --

THE COURT: Tell us your brother-in-law's name.

THE WITNESS: His name is Salvatore Boutureira.

MR. COSTELLO: Can we have the location of this valise, your Honor, during this two-week period?

THE COURT: Yes. Between the time that you got the valise yourself and the time that you took it to your brother-in-law's house, where had it been?

THE WITNESS: In the trunk of my car.

THE COURT: In the trunk of his car. All right.

Q Tell us at this first meeting that you had with your brother-in-law, what was said by you and what was said by him as best as you recall?

A I stated to my brother-in-law if he could get rid

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of the narcotics for us. He stated to me that he would try, and that is what I recall of that conversation.

Q Did you tell him at any time how much narcotics was involved?

A I stated to him that there was approximately 5 bags inside the suitcase.

Q Did you identify the narcotics any further?

A I don't recall.

MR. SCHWARTZ: Objection, leading, your Honor.

THE COURT: I will permit it.

A There came a time in the apartment or his home -- in the apartment that we did that.

Q When did that occur?

A As I best recollect, the same day that I had the conversation with him on 14th Street.

Q You went to his home?

A Yes.

Q Tell us what was said there and what was done there?

A The best recollection I have is that I showed him the narcotics. He stated to me how much did I want the narcotics sold for and I said to him, "We don't care how much you get, just get rid of it."

Q Did you tell him what the narcotics were?

MR. SCHWARTZ: I object to the leading of the witness

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THE COURT: Yes, try to avoid leading questions as far as you can, Mr. Giuliani.

All right, let's go on.

Q Was there any further conversation at that time?

A The further conversation I recollect is that at the meeting at his home we opened the suitcase and at that time I told him that I thought there was three kilo bags of heroin and two kilo bags of --

MR. SCHWARTZ: I object to what he thought.

THE COURT: He told his brother-in-law of this. Go ahead.

Q I'm sorry. You told your brother-in-law you thought what?

A The valise contained three kilo bags of heroin and two kilo bags of cocaine.

MR. COSTELLO: I agree with Mr. Giuliani, sir. I get about every other word of what this man says. I know your problem.

THE COURT: Keep your voice up. Let's go on.

Q Did there come a time after this conversation with your brother-in-law that you, Novoa and Daly were conducting a surveillance in the area of the Cafe Madrid?

A Yes, sir.

Q Can you tell us what occurred?

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A I recall that we were conducting observations on 14th Street and there came a time where we observed a male hispanic exit from the Cafe Madrid wearing a black leather jacket.

Q What else occurred?

MR. COSTELLO: May I have the time and date, your Honor?

THE COURT: Yes. Mr. Giuliani, as far as you can, try to fix the time and date?

Q Can you tell us approximately when this occurred?

A To the best of my recollection, approximately a month later after the arrest.

Q That would be May or June of 1970?

A It would be late April, early May of 1970.

Q Was it before your vacation?

A It was, yes.

MR. COSTELLO: Objection to the leading.

MR. GIULIANI: I am trying to set a time, your Honor.

THE COURT: All right, go ahead.

Q When was your vacation?

A As I recall, it began on June 22 and terminated on July 6, 1970.

Q Can you tell us as a result of this observation, did

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you have a conversation, Novoa, Daly, and yourself?

A Yes, I recall that we had a conversation and it revolved around the fact that we were suspicious of this male hispanic and that perhaps maybe Sal had something to do with this.

Q What did you do and on what date?

A I recall that Detective Novoa and Daly proceeded with me to the Club Espana where we engaged Sal in conversation.

Q What did you say to your brother-in-law and what did Novoa and Daly say; tell us what the conversation was, the best you remember.

A As I recall the conversation, it was mainly between Sal and myself. I stated to Sal "Do you have anything to do with that male hispanic" or "with the man with the black leather jacket"? He stated to me "Yes. How did you know?"

I said "It was just a guess. We were suspicious of that."

That is what I recall of the conversation.

Q Any further conversation at that time?

A This initial conversation took place on the street. The subsequent conversation I recall took place inside the Club Espana. It revolved around the fact of the mechanics of getting rid of the package of heroin.

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Q Who was present during the time this conversation went on?

A As I recall, it was just Sal and myself during this latter conversation.

Q What did he say to you and what did you say to him?

A He stated to me that he wanted to put the package in back of the club, specifically in an empty parking lot on the back side of the club. I think it is Greenwich Avenue. And he took me out there and showed me exactly at what point he wanted to place the package and I agreed with him.

Q What did you do after that conversation?

A I returned back to Detective Novoa and Daly and I informed them of the conversation I had with Sal.

Q What did you tell them?

A Exactly what transpired insofar as that -- beginning with the fact that the man with the leather jacket had something to do with Sal and also about the placing of the package in the parking lot.

Q What happened after that?

A Detective Novoa, Daly and myself returned to the Cafe Madrid where we had observed earlier the exited -- when the hispanic left the Cafe Madrid. Once again we observed him entering and exiting from the restaurant.

Q What did you do?

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A I recall that we departed from the immediate area of the Cafe Madrid and proceeded to a point in back of the Club Espana to observe if in fact -- the sale of that package that evening.

MR. COSTELLO: Can we have the time, place, who was present at this observation post.

THE COURT: Yes.

Q Approximately when did this occur?

A I have no specific recollection of the date, Mr. Giuliani.

Q Between the area of May or June 1974, before your vacation?

A I would say that, yes.

Q Who was present when you were making these observations?

A Myself, Detective Novoa and Daly.

Q Were you in the car?

MR. COSTELLO: Objection to the leading. He is testifying for him again.

-3-5 THE COURT: I understand. All right. Go ahead.

Q What were you in?

A We were on foot inside of the lobby of the building opposite the parking lot.

MR. COSTELLO: I didn't hear the answer.

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THE COURT: Please read it, Mr. Reporter.

(Answer read.)

Q What if anything did you observe?

A There came a time where myself and Detective Novoa and Daly observed that same male hispanic with the black leather jacket riding a motorcycle, entering the parking lot from the street, proceeding to the point where I had previously been with Sal, lean over from the bike, pick up the package, rip off the outer paper and examined for a few seconds the package in his hand.

We further observed that he proceed out from the parking lot to the street level and at that point a taxi pulled up to the street. The package was thrown in the back of the taxicab and the taxicab proceeded at a high speed out of the area with the motorcycle in pursuit.

MR. COSTELLO: I didn't hear the last part.

THE COURT: With the motorcycle in pursuit.

Q Within a few minutes or within a period of time on that same evening, did you meet with your brother-in-law?

A Yes. After the observations of the motorcycle and the cab we proceeded to 14th Street in the vicinity of the Club Espana. I recall that we were driving my car. As we passed the Club Espana Sal was in his car and he proceeded to follow us to the Hotel Taft.

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Q When you say "we," who was in your car?

A Detective Novoa and Daly.

Q When you arrived at the Hotel Taft, what occurred?

A I recall that Detective Daly went up to one of the security personnel in the hotel and secured a room in said hotel.

Q Do you know if he checked in?

A I don't recall.

MR. COSTELLO: May we have a time and date when Mr. Daly is alleged to have obtained --

MR. GIULIANI: The same date.

THE COURT: I don't think we can do better, Mr. Costello, until cross-examination, at the moment.

MR. GIULIANI: May I have this marked as the next Government Exhibit.

(Government Exhibit 4 marked for identification.)

Q I show you what has been marked as Government Exhibit 4 for identification and ask you if you have ever seen that before?

A Yes, I have.

Q When did you see it?

A In your office.

Q Did you on the evening that you checked in see Detective Daly sign or in any way check in in the normal

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manner that you would check into a hotel; do you recall?

A What I exactly recollect is that I observed him in conversation with a security person in the hotel that was known to us.

MR. COSTELLO: I can't hear him.

THE COURT: Let him finish and then I will ask the reporter to read it.

Go ahead.

A What I recollect is that Detective Daly was seen by me in conversation with a security person in the hotel and I further observed that he was given a key to a room.

MR. COSTELLO: May I see that registration card?

MR. GIULIANI: I haven't offered it yet. I will have to do it through another witness.

THE COURT: All right.

Q Can you tell us what occurred next?

A I recall that Sal, myself, Detective Novoa and Daly proceeded upstairs to a room, entered the room, and I observed Sal remove from his shirt, inside of his shirt quantities of U. S. Currency that was placed on a bed.

Q Can you tell us what demoninations these bills were? Were they large bills or small bills, if you recall?

A I recall varied demoninations of bills.

Q From very small to very large?

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A I would place them small to large, yes.

Q What happened after the money was placed on the bed?

A I recall the conversation with Detective Novoa where he told me what he was thinking or he stated to me that he was thinking of giving Sal an equal share in the proceeds of the money on the bed.

Q What did you, Daly or Mr. Boutureira say to that?

A I recall Daly saying it was fine with him and I said it was fine with me.

Q What if anything did you do?

A I recollect that each of us got busy counting the money on the bed.

Q Do you recall what the total amount of money was on that occasion?

A To my recollection it was $12,000.

Q What happened after you counted the money?

A After the money was counted we placed it in even piles on the bed and I further recall that each of us took a pile of money, approximately $3,000.

Q Directing your attention to the period of time within 2, 3, possibly 4 days of this event and again in May or June of 1970, did you have occasion with Detective Daly and Novoa to overhear your brother-in-law's voice on a wire tap?

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A Yes, sir.

Q Where were you at that time?

A At that time we were located in a basement of a building situated on 13th Street and 7th Avenue.

Q By "we" who do you mean?

A Myself, Detective Novoa and Daly.

Q Was this a legal or illegal wire tap?

A This was an illegal wire tap.

Q Can you tell us what you overheard, as you recall?

A If I recall, I overheard Sal in conversation in the Madrid with an unknown party on the phone and I further recalled that at the time the unknown party was telling Sal that he was in a subway station attempting to place a package in a locker.

MR. SCHWARTZ: May we approach the side bar for a moment?

THE COURT: Yes.

(At the side bar.)

MR.SCHWARTZ: Your Honor, I know the government has to present their case the best way they know how. Nevertheless I must strenuously object on behalf of the defendant Nieves to any reference to illegal wire taps and to the fruits thereof with regard to evidence coming into this trial.

MR. STONE: I will join in that objection in behalf

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of the defendant Papadakis.

It is also part of the conspiracy count where they are not named as co-defendants.

MR. GIULIANI: They have no standing.

THE COURT: But Nieve and Papadakis are named in the conspiracy count in count 4 and I have been taking this evidence subject to connection as against Mr. Schwartz' client despite Mr. Schwartz' objection on the theory that it might be admissible under the count 4 conspiracy count.

MR. SCHWARTZ: I agree.

THE COURT: And subject to your motion later.

MR. STONE: I have also, I believe, reserved the right to strike, but this particular conspiracy is for obstructing justice and use of an illegal wire tap is part of the obstructing.

MR. GIULIANI: No, it is part of the conspiracy to sell narcotics, second transaction.

THE COURT: Yes. This is the subway locker transaction to which Boutureira has already testified. I think it is admissible on the same basis.

MR. SCHWARTZ: Our objections are noted.

THE COURT: Of course.

(In open court.)

Q Did you have a conversation with Daly and Novoa

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about what was overheard?

A Yes, I recall a conversation in the basement with Novoa and Daly.

Q What was said?

A Detective Novoa and Daly were very upset with Sal due to the fact that he was so stupid as to talk on the phone involving that transaction.

Q What else was said?

MR. COSTELLO: Objection to the conclusions. Let him relate who said what to whom? And I want a time and date.

MR. GIULIANI: He has already said the time already to the best of his ability twice as to this transaction.

MR. COSTELLO: Mr. Giuliani keeps saying that. May I ask that the government produce his UF 16? Then let him refer to his memo book which will then give him a cha. e to give the exact time and hour.

THE COURT: You will be given a chance to go into this on cross-examination.

MR. COSTELLO: Thank you, your Honor.

Q Tell us, as best you remember, what Detective Novoa said, what Detective Daly said and what you said?

A To the best of my recollection they stated to me "How can a guy be so stupid as to talk on the phone like that?"

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Q What did you say?

A I said that I would have a talk with him.

Q Did you meet with your brother-in-law, Mr. Boutureira?

A I left the basement on 13th Street, immediately and proceeded -- after that conversation with Novoa and Daly-- to the Club Espana.

Q Did you have a conversation with your brother-in-law?

A Yes. Some few minutes after arriving at the Club Espana my brother in law had come into the club. At that time I asked him did he have anything to do with a locker on the subway station and he said, "How did you know about this?"

I said, "Never mind how I know about it. Just be careful. Don't be so stupid as to talk on the phone."

Q What else did he say to you, if anything?

A He told me he'll take care of the matter.

MR. COSTELLO: I didn't hear that.

MR. GIULIANI: He said "He would take care of the matter."

Q Did there come a time when you went on vacation?

A Yes, sir.

Q When was that, approximately?

A As I stated before, in the vicinity of June 22 or a few days prior.

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Q Until?

A July 6.

Q When you returned from vacation did you have occasion to meet with your brother-in-law again?

A I recall, yes.

Q How many times, if you recall?

A I definitely recall one time. Perhaps another time after that.

Q Who else was present other than your brother-in-law and yourself?

A The first meeting there was myself, Detective Novoa, Daly and my brother-in-law present.

Q Did there come a time when your brother-in-law gave you an additional amount of money?

A Yes, sir.

Q Did he tell you what the money was from?

A Yes, he said to me and Novoa and Daly that it was from the sale of a second package of narcotics.

Q Can you tell us did you have later meetings with him in which he discussed the other packages of narcotics?

MR. SCHWARTZ: Objection, your Honor.

THE COURT: Yes, I think, Mr. Giuliani, you might best phrase the question otherwise.

Q After the first meeting at the Hotel Taft, how many

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additional meetings did you have with your brother-in-law in which he gave you, Novoa and Daly money; do you recall?

MR. COSTELLO: He is leading again.

THE COURT: I will permit it. Let's go on.

A I recall two other meetings besides the initial meeting at the Taft.

Q And tell us the total amount of money that was given to you by your brother-in-law?

A It was between -- the total amount of the five kilograms of narcotics?

Q That is right.

A Approximately between $53,000 and $56,000.

Q How was that divided?

A That was divided equally.

Q How much did you receive, approximately?

A Approximately $14,000 or so.

Q And Detective Novoa?

THE COURT: On these two occasions after the Hotel Taft, your brother-in-law, Sal, gave you money?

THE WITNESS: Yes, sir.

THE COURT: Now, when he gave you money was Daly and Novoa present?

THE WITNESS: I can definitely recall one meeting where they were present, your Honor, and I received $6,000 or

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each of us received $6,000 and a subsequent meeting that is vague in my mind.

THE COURT: All right. At the meeting where you and Daly and Novoa received $6,000, where was it?

THE WITNESS: That was in the vicinity of 14th Street and 7th Avenue.

THE COURT: Was it on the street?

THE WITNESS: On the street.

THE COURT: Did he give you, each of you $6,000; is that the idea?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q And at that last meeting, do you recall who was present?

A The last meeting that I recall is that Detective Novoa and Daly were present and I received a quantity of money from one of them. I don't recall which one.

Q From either Novoa or Daly?

A Yes, sir.

Q What did they tell you about the money?

A They told me that they had received the money from Sal and since I wasn't present for that they were seeing me at that point.

Q Did they tell you what it was for, if anything?

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A It was for one of the packages that was sold by Sal.

MR. COSTELLO: Again, your Honor, may we have a time and date?

THE COURT: Can you fix it any better as to time and date?

THE WITNESS: The time, your Honor, the evening hours. The date, I have no recollection whatsoever.

THE COURT: Was it after you came back from vacation?

THE WITNESS: Yes, sir.

THE COURT: All right. Go ahead.

Q Again referring to the period of time shortly after you came back from vacation, July 6, 1970, did you have a discussion with Daly and Novoa about an apartment in Brooklyn?

A Yes, I recollect that conversation.

Q And can you tell us what was said and by whom?

A Shortly after returning to duty after my vacation I went to the SIU office where I met Detective Novoa and Daly. That time I recall Detective Novoa informed me that while I was away on vacation they had found the apartment belonging to the female on the 100 kilo case -- that is the case in the Sixth Precinct -- and that when they went over to the apartment they found $5,000 in the apartment and I had one third of the money coming to me.

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Q Was that given to you?

A It was.

Q By whom?

A By Detective Novoa.

MR. COSTELLO: Time and date, your Honor.

THE COURT: Yes. Can you tell us about when this was? It was after you came back from vacation?

THE WITNESS: I would say it was my first day bac from vacation at SIU, your Honor.

MR. COSTELLO: May we have the date?

THE COURT: He came back July 6. It must have been July 6 or 7.

THE WITNESS: In fact I did return -- it must have been a couple of days.

MR. STONE: Objection as not binding on Papadaki

THE COURT: Your objection is noted. Overruled.

MR. COSTELLO: May we have the time, your Honor? He gave the date?

THE COURT: Was it in the daytime or the evening; do you remember?

THE WITNESS: It was in the daytime, your Honor.

THE COURT: The daytime?

THE WITNESS: The location was SIU sometime after July 6, 1970.

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Q Directing your attention to a period of time between March 31, 1970 and April 14, 1970, did there come a time when you had a conversation with Daly and Novoa about a detective named Nicholas Lamatina?

A Yes, sir.

Q Can you tell us what was said and by whom?

A Well, I recall initially Detective Daly --

MR. SCHWARTZ: May I join in the motion made by Mr. Stone with relation to this?

THE COURT: All right.

MR. SCHWARTZ: Thank you.

A I recalled initially Detective Daly told Novoa and myself that one Nick Lamatina wanted to talk to us. I recall that I said it was fine and he, Detective Novoa, asked him for what, and Daly said it had something to do with fixing a case involving a previous arrest that we had made prior to the hundred kilo case.

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Q Can you tell us the name of the defendants in that previous arrest?

A Yes, one Alberto Diaz and Raul Leguizamon.

THE COURT: Mr. Giuliani, what is this evidence introduced for?

MR. GIULIANI: Your Honor, I can point to the overt act. I will get a copy of the indictment.

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THE COURT: All right, I wish you would.

MR. SCHWARTZ: May we have this at the side bar?

THE COURT: I don't think we need that.

MR. GIULIANI: There are a number. Overt act number 8 of count 1.

MR. COSTELLO: What page, please?

MR. GIULIANI: Page 5 of the indictment.

THE COURT: Yes.

MR. GIULIANI: It also relates to -- I guess it is just overt act number 8, your Honor.

THE COURT: So that it is not offered against Nieves or Papadakis?

MR. GIULIANI: No, your Honor, just against the defendant Novoa.

MR. SCHWARTZ: May I have the instruction to the jury?

THE COURT: Yes, of course.

As you have just heard, the evidence as to the conversation with this other detective Lamatina is not offered and is not being received against any defendant except the defendant Novoa, and therefore this evidence is not to be considered as against either the defendant Papadakis or the defendant Nieves.

All right, let's go on.

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MR. GIULIANI: The balance of the testimony would only be offered as against the defendant Novoa.

THE COURT: All right. From this point on it is only offered against the Defendant Novoa.

Q Can you tell us the date on which you, Daly, and Novoa arrested the defendants named Leguizamon and Diaz?

A March 31, 1970.

Q Did there come a time when you met with Detective Lamatina?

A Yes.

Q Who met with him?

A Myself, Detective Novoa and Daly.

Q Can you tell us where that meeting took place?

A In the vicinity of SIU, first precinct.

Q Can you tell us what Detective Lamatina said to the three of you and what you said to him?

A He stated to us that the lawyer or the attorney for Leguizamon and Diaz wanted to know if he could fix the case with us and that there was an amount of money involved.

THE COURT: Mr. Giuliani, let me see you and counsel at the side bar.

(At the side bar.)

THE COURT: I may be mistaken, but this overt act number 8 talks about corruptly disposing of the criminal

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charges against the offenders.

MR. GIULIANI: That is right.

THE COURT: But he isn't talking about any offenders.

MR. GIULIANI: He will in a minute, your Honor. I understand the evidence is that this attorney who was involved --

MR. COSTELLO: Who is the attorney?

MR. GIULIANI: Michael Santangelo who was involved in the Leguizamon-Diaz case, the case that was made two weeks before the hundred kilo case.

MR. COSTELLO: Defense counsel for Leguizamon?

MR. GIULIANI: Yes, sir, he is.

Shortly after the hundred kilo case, while this negotiation was pending to fix the Leguizamon case, once again the same person Lamatina, spoke to these offenders and offered them $150,000 to fix the kilo case. He said he wouldn't do that unless he paid them the money. The detectives wouldn't talk to him about that unless he paid them the money he owed them on the earlier case. As a result there are if he paid $5,000 on the earlier case.

THE COURT: So what you are telling me is that although these particular questions don't relate to the offenders you believe that it will be connected?

MR. GIULIANI: Yes, sir.

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MR. COSTELLO: Well would you so instruct the jury?

THE COURT: No, I better not do that.

(In open court.)

MR. COSTELLO: In view of the side bar conference, I wonder if MR. Giuliani during his Q and A might designate the parties and their relationship to each other.

THE COURT: All right, you can have that in mind, if you like, Mr. Giuliani.

MR. COSTELLO: Thank you.

THE COURT: Let's go on.

Q Once again, Detective Aguiluz, this meeting with Detective Lamatina occurred between the end of March and before April 14, 1970; is that correct?

A Yes, sir.

Q Who was present at this meeting?

A Myself, Detective Novoa and Daly.

Q And Detective Lamatina?

A Of course.

Q Can you tell us what was said?

A Lamatina stated to us that he was serving as an intermediate -- I am vague on this -- for the attorney for Leguizamon and Diaz, someone by the name of Santangelo. Also another name that he mentioned was DiStefano. He told us that there was some money involved if we could fix the case.

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Q What did you, Daly or Novoa say?

A I recall Novoa stating that a $25,000 figure would be acceptable to us and I also recall that Daly and myself had no objections to that affect.

Q What occurred, if anything else, during that conversation?

A That is the best of my recollection that I have at that time.

Q Any further readings with Detective Lamatina before April 14, 1970?

A Yes, I recall another time where Daly told Novoa and myself that Lamatina wanted to see us again and we did meet, in fact, with him and turned over some personal papers belonging to Leguizamon and Diaz over to him.

Q Any further meetings with him before April 14, 1970?

A The only recollectim that I have is that Novoa verified the fact to me.

MR. COSTELLO: Objection to the characterization as "verified," your Honor. I want to know who said what to whom and the time, date and place.

THE COURT: Go ahead.

Q Would you do that?

A The time would be sometime after the April 15 arrest. The place somewhere in the vicinity of SIU. Novoa stated

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to me that he had turned over papers to Lamatina, specifically passports and personal papers, belonging to Leguizamon and Diaz.

Q Directing your attention to sometime within a month or two of the April 14, 1970 100 kilo arrest, did you have an occasion to meet with Detective Lamatina again?

A Yes, I recall another meeting with Detective Lamatina.

Q Will you tell me who was present at that meeting?

A Myself, Detective Novoa and Daly.

Q Did you recall where that meeting took place?

A Again in the vicinity of SIU, first precinct.

Q Can you tell us what you remember of what was said at that meeting?

A As I recall, Detective Lamatina stated to Novoa, Daly and myself that Santangelo, the attorney, again in this case wanted to know if this case could be fixed for a large figure, amount of money.

Q What did you say? What did Novoa say and what did Daly say?

A As I recall again, Detective Novoa mentioned the figure, another figure of $150,000, which was acceptable to me at that time. I don't recall specifically what I said to him. In any event, I didn't raise any objections.

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Q Was there any other conversation at that time?

A Yes. I further recall that Detective Novoa informed Lamatina that collectively, the team being myself, Novoa and Daly, we were upset to the fact that from the first contact we had with him regarding the case we had not received any money at all for the favors that we had done Santangelo or DiStefano. Lamatina, I recall, stated to us that he would go back and see if he could get some money to show good faith in order to deal with this new case involving a large amount of money.

Q Was there an amount of money mentioned?

A Yes, I recall the figure of $5,000.

MR. COSTELLO: Do we have DiStefano identified?

THE COURT: Yes, I think he mentioned him sometime ago. Who is DiStefano?

THE WITNESS: To my knowledge he is a bail bondsman here at the Baxter Street area, Manhattan.

THE COURT: A bail bondsman in the area of Baxter Street.

MR. COSTELLO: Thank you.

THE COURT: All right.

Q Did there come a time when you met with Detective Lamatino once again?

A Yes, sir, I recall another meeting.

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Q Would you tell me approximately how long after this last meeting you just related to us it was?

A I would say a week or two after that.

Q And can you tell me where that meeting took place?

A I recall that myself and Novoa and Daly were returning from lunch and Lamatina was standing on the corner in the vicinity of SIU. I further recall that upon approaching Lamatina Daly and myself kept walking and as we walked some 20 feet past Lamatina he came in contact with Novoa. I further observed that at that time, as I looked back, Lamatina handed Novoa an amount of U.S. Currency, but I have no information to that effect, you know, how much was there.

MR. COSTELLO: May we have the time, please, hour of the day?

THE COURT: He has given all that as best as he can. All right.

MR. COSTELLO: May I have it again, the hour of the day, sir?

THE COURT: I don't know that he was able to do that. He says it was about a week after the meeting to which he has already testified and it is in the vicinity of SIU and he and Daly have walked past Lamatina and Lamatina, as far as he was concerned, then gave something to Novoa.

Is that correct?

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THE WITNESS: That is correct, sir.

Q What occurred after that?

A I looked back and after the money was transferred to Novoa Lamatina departed from the area and Novoa walked towards Daly and myself and he told us Lamatina had handed him $5,000.

Q What happened after that, if anything?

A As I recall, Novoa placed the money in his pocket. We went up to SIU, remained there a couple of hours and at some later point the money was divided by him and I received approximately one third of $5,000.

MR. COSTELLO: May we have the time and place of the division?

THE COURT: Where did you get this one-third?

THE WITNESS: Initially, your Honor, we met Lamatina around 12 noon in the area of SIU. That is, I would say around 12:30 we proceeded to SIU until about 2:30 and approximately 3 o'clock underneath the viaduct of the FDR Drive in the vicinity of SIU the money was handed to me by Novoa.

THE COURT: All right.

Q Did there come a time when you had another meeting with Detective Lamatina after that?

A I don't recall specifically. I do recall a meeting

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that is vague in my mind and it was with Detective Lamatina to the effect that Santangelo -- initially, as I recall, I stated to Detective Daly that in any future transactions I would want to be part of them and I would want to deal with Santangelo face to face. I recall the meeting with Lamatina regarding this matter and at that time he stated to me that it would be possible.

Q Aside from the action you described in your testimony, described in this case, have you when you were a police officer with the SIU committed other illegal acts?

A Yes, sir.

Q Would you tell us what kind.

A Say, in effect, the information that I have supplied the government which would be in the area of illegal wire tapping, perjury, the sale of narcotics and the theft of money.

Q Directing your attention to October 22, 1969, did you arrest defendants named Mendez and Castillo?

A Yes, sir.

Q Did you seize an amount of money from them?

A Yes, sir.

Q How much money did you seize from them?

A As I recollect, $11,000.

Q Did you turn that money in?

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A No, sir.

Q What was done with the money?

A That money was retained by Detective Novoa and Fox, and ultimately divided equally five ways. Correction on that, four ways and another amount of money was turned over to another police officer.

Q Can you tell us who the police officers were who divided that $11,000?

A Myself, Detective Stefania, Novoa and Daly and Sergeant Donovan.

Q With reference to the case involving the arrest of the defendants named Leguizamon and Diaz in addition to what you testified to already about that case, did there come a time on March 31, 1970 when you seized an amount of money from those defendants?

A Yes, sir.

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Q And how much money was that?

A $40,000.

Q And how was that -- what was done with that money?

A That money was retained by myself, Lieutenant Egan, Joseph Novoa and Daly and Sergeant De Stefano.

Q With reference to a case involving a defendant named Banderas on approximately May 11, 1970, did you have occasion to seize money in that case?

A Yes, sir.

Q And what was the total amount of money seized?

A Initially Detective Daly seized at JFK Airport an approximate figure of $210,000.

Q And how was that money divided?

A That money was divided equally by police officers.

MR. COSTELLO: May we have the time, date and place?

MR. GIULIANI: May 11, 1970.

Q Can you tell us the detectives involved in that?

MR. COSTELLO: May we have a time on May 11, 1970, your Honor?

THE COURT: Yes, the time for the division?

MR. COSTELLO: The hour of the day when this division allegedly took place.

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THE COURT: Do you know what time of the day the division of the money took place?

THE WITNESS: To the best of my recollection, your Honor, it was between 7.00 p.m. and 9.00 p.m. on May 11, 1970.

THE COURT: Between 7.00 and 9.00 p.m.

Is that all right?

MR. COSTELLO: Yes, thank you.

Q And who divided that -- what detectives?

A Myself, Lieutenant Egan, Novoa, Daly, De Stefano and Charles Wooster.

Q Directing your attention to an arrest made or a seizure made in June or July of 1970, of a defendant named Lopez, was money seized from Lopez?

A Yes, sir.

Q How much money did you receive?

A Approximately $40,000.

Q How was that money divided?

A That was divided equally by myself, Novoa and Daly.

Q With regard to a defendant named Olate --

MR. COSTELLO: Excuse me --

MR. GIULIANI: May I finish the question?

MR. COSTELLO: I was going to ask the time

on the last one.

Q With regard to the Lopez case, can you tell the exact date that that occurred, the division of money in the Lopez case?

A I don't recall, sir.

Q Do you recall the time, the approximate time at which it occurred?

A It was in the afternoon.

Q And do you recall the month or months in which it might have occurred?

A To the best of my recollection, June -- late June.

Q 1970?

A To the best of my recollection, yes.

Q With regard to the Olate case, do you recall the date on which you arrested the defendant and others -- one of them being named Olate?

A Yes, sir.

Q Approximately when did that occur?

A Late 1970.

Q Would it be in September?

A Yes, sir.

Q How much money was seized in that case?

A As I recall, an amount in the area of $7000.

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Q And how was that money divided -- among what officers?

A Myself, Detective Novoa, Daly and Sottile.

MR. COSTELLO: May we have a time and date on the Olate case, your Honor?

THE COURT: Are you able to give us that?

THE WITNESS: Yes, sir. It was at evening hours, shortly after the arrest at the 18th Precinct in Manhattan.

MR. COSTELLO: And the date, your Honor?

THE COURT: Mr. Giuliani, did you bring out the date of the Olate arrest?

MR. GIULIANI: The witness says September is his best recollection, and the exact date from the records is September 11th.

THE COURT: All right.

Q Directing your attention to the case known as Del Valle, can you tell us the amount of money seized in that case and approximately when that seizure took place?

A Yes, sir. There was approximately $10,000 retained by us -- a total of some $17,000 was seized initially. However, $8700 was vouchered to the Police Department Property Clerk.

Q When you say "vouchered," what do you mean?

A The money was turned over to the Police Depart-

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ment and vouchered.

Q And the amount of money that wasn't turned over, howwas it divided?

A It was divided equally four ways: myself, Detective Sottile, Detective Hassel and McCrory.

MR. COSTELLO: The same request, your Honor, the time and date.

THE COURT: All right.

Q Do you recall the time and date?

A I would say it was between June of 1969 and early September of '69.

Q Directing your attention to a case known as the McAlpin case, an arrest at the McAlpin Hotel on December 6, 1969, was money seized in that case?

A Yes, sir.

Q How much money?

A The total amount of money seized?

Q If you recall.

A $23,900.

Q Tell us what happened.

A $3900 was vouchered to the Police Department and $20,000 was retained by the police officers.

Q Did you retain a portion of that?

A Yes, sir.

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Q Did that involve Detective Novoa?

A No, sir.

Q Finally with regard to a case known as the Balbede case, an arrest on November 25, 1970, was money seized and not turned in in that case?

A Yes, sir.

Q What was the total amount?

A To my recollection, $68,000.

Q And how many detectives divided that money?

A Five.

Q Were you included?

A Yes, sir.

Q Was Detective Novoa involved in that?

A No, sir.

Q Did there come a time, Detective Aguiluz, when you were placed under arrest?

A Yes, sir.

Q Do you remember when that was?

A That was February 14, 1974.

Q By whom were you arrested?

A By members of the Drug Enforcement Agency and the New York City Police Department officers.

Q Can you tell us, as you recall, what you were arrested for -- for what crime?

A To my recollection I was arrested for committing perjury before a grand jury in the Southern District of New York.

Q Did there come a time when you revealed other activities other than the perjury for which you were charged?

A Yes, sir.

Q Is that basically what you testified to today?

A Yes, sir.

Q Can you tell us to whom did you make those recollections and when?

A I would place it some time after the 16th of February of '74 to yourself and Mr. Puccio and Mr. Higgins.

Q Who is Mr. Puccio?

A Mr. Puccio is the Chief of the Criminal Division in the Eastern District of New York.

Q And Mr. Higgins?

A Mr. Higgins is an Assistant U.S. Attorney in the Southern District of New York.

Q Can you tell us what you understand you are going to receive in return for your cooperation that you have given to the United States?

A Yes. As I understand, I will not receive immunity. I will have to plead guilty to a felony count

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involving this case, and another felony count in a conspiracy case in the Eastern District of New York.

I have been told that at the time of sentence the judge will be made aware of my cooperation; also that my family and myself will be relocated and protected to some point outside the continental United States.

And I have been told also by the U.S. Attorney in the Southern District of New York and the Eastern District of New York that a pension application to the Police Department by me on a heart disability would be recommended by them, to be evaluated on its merits, not co be interfered with.

Q To be "evaluated" -- I am sorry?

A On its merits.

THE COURT: You mean on its medical merits?

THE WITNESS: Yes, exactly.

MR. COSTELLO: May we have the dollar amount of this alleged disability, your Honor?

THE COURT: Yes. You can ask that on cross-examination.

MR. GIULIANI: No further questions.

THE COURT: All right. Suppose we take our morning recess.

Madam Foreman and ladies and gentlemen of the

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jury, you may retire to the juryroom for a few minutes' recess.

(Jury leaves courtroom.)

THE COURT: Mr. Aguiluz, you may be excused for a few minutes.

THE WITNESS: Thank you, your Honor.

(Witness leaves the courtroom.)

THE COURT: Now I think the record should show, because it won't, that the two jurors who held up their hands to indicate that they had read the press article, the Jurors Nos. 8 and 12.

THE REPORTER: The record has already indicated that, your Honor.

THE COURT: Good. We have very efficient reporters.

MR. GIULIANI: Alternate No. 2 also raised her hand, your Honor.

THE COURT: Well, I did not see that.

MR. COSTELLO: I can corroborate that.

THE COURT: Do you think it is worth going back and asking her?

MR. COSTELLO: The defendant Novoa doesn't think so, your Honor.

MR. GIULIANI: No, your Honor.

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THE COURT: All right.

Was there anything else other than the bill of particulars which you dictated the other day, Mr. Giuliani?

MR. GIULIANI: So far as I know, no, your Honor.

THE COURT: You know, I can't seem to get it straight. Who are the co-conspirators in the two conspiracy counts?

MR. GIULIANI: That I named on Thursday or Friday?

THE COURT: That the government claims were the co-conspirators known and unknown.

MR. GIULIANI: As to count 1, your Honor --

THE COURT: Yes.

MR. GIULIANI:--it would include other than those named in the indictment, Mr. Aguiluz, Nicholas Lamattina, Michael Santangelo, James Sottile, Gabriel Stefania, and a detective named Fox.

As for count 4, the second conspiracy count, it would be Mr. Boutureira, and Lorenzo Cancio.

THE COURT: What about Aguiluz?

MR. GIULIANI: And Aguiluz -- I am sorry, your Honor.

THE COURT: Aguiluz, you see, is not named in the indictment.

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kpl2

MR. GIULIANI: That is right, sir.

MR. COSTELLO: That is right.

THE COURT: But you claim that Aguiluz is one of the known and unknown co-conspirators in count 4?

MR. GIULIANI: That is right, sir.

THE COURT: And is it your recollection that these are the names that you dictated on the record?

MR. GIULIANI: Exactly.

THE COURT: What?

MR. GIULIANI: Exactly the same names, sir.

THE COURT: All right. Thank you. Suppose we take a few minutes; recess.

(Recess.)

THE COURT: All right, Mr. Clerk, will you bring the jury in.

MR. COSTELLO: Your Honor, the 3500 material you recognize is voluminous. I should like some more time to go through it.

THE COURT: Well, suppose we go, then, to 12.30 and we will start at 2 o'clock, which will give you 15 minutes extra during the lunch hour.

MR. COSTELLO: All right.

(Jury in box.)

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mccg 9 Aguiluz-cross

* * * * *

P.M. -3-2

MR. COSTELLO: I withdraw the question.

Q Did you, Officer, ever plant a gun on a man named Ricardo and testify against him in Court, as a result of which he was sentenced to State Prison?

A No, sir.

Q Officer, you testified in the Eastern District of New York on another matter, did you not?

A Yes, sir, I did, sir.

Q Were you asked any questions relating to the planting of a revolver or an automatic pistol on a man in the area of Broadway and 103 Street whose name I believe was Ricardo?

A Yes, sir.

THE COURT: We can't have more on this. This is a collateral matter and he has denied that he ever did it and you are bound by the answer. Let's go on.

MR. COSTELLO: Your Honor, if it please the Court, I thought that he answered it "yes" while your Honor was talking.

THE COURT: It wouldn't make any difference how he answered it. He answered, I suppose, that he was asked some question about this in another trial, but that doesn't change the rule of evidence.

It is a collateral matter and you are bound by his answer. Go on.

* * * * *

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A I don't recall that situation, no.

Q Well, was Raoul Luguizamon a well known South American soccer player?

A It was established after the arrest that he was.

Q Evidence came out to that effect.

A Yes, sir.

Q Now was this wiretap authorized?

A It was an illegal wiretap.

Q It was an illegal wiretap?

A Illegal.

Q And you installed it?

A Yes, along with Detectives Novoa and Daly.

Q Did I ask you that?

MR. GIULIANI: Objection.

THE COURT: It doesn't make any difference. Let us go on.

Q Now did there come a time when you went to Court and testified against this Mr. Luguizamon?

A I don't recall giving testimony in that case, Mr. Costello.

I do recall that Luguizamon pleaded guilty -- copped a plea.

Q You say he copped a plea.

A Yes, sir.

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Q Was Mr. Luguizamon given time to hear me?

MR. GIULIANI: Objection.

THE COURT: Yes, sustained.

Q Was he sentenced?

MR. GIULIANI: The same objection.

THE COURT: Yes, sustained. I don't think we have anything to do with Mr. Luguizamon.

Q Now will you tell the ladies and gentlemen of the jury whether or not you sent in an affidavit alleging that you had Mr. Luguizamon under observation from another hotel room or some other vantage point?

A I do recall signing an affidavit to that effect, yes.

Q That was a lie, wasn't it?

A Yes.

Q Will you tell the ladies and gentlemen of the jury whatyou said in the affidavit?

A Yes. I stated in the affidavit that in open view through the window of the hotel I did observe approximately 28 kilograms of heroin lying on a bed but when I entered the room I found the kilograms in the closet of Luguizamon.

Q Who had registered this room?

A Raoul Luguizamon.

* * * * *

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* * * * *

A No, sir.

Q He never furnished you with information --

A No.

Q -- is that right?

A That is correct.

Q Now there came a time, sir, when you testified that you acquired 5 kilos of narcotics, is that right?

A Yes, sir.

Q And this five kilos was actually stolen from a larger amount, is that right?

A Yes, sir.

Q It was originally, by your testimony, taken by Detective Daly --

A And myself.

Q -- is that correct?

A And myself.

Q And yourself.

A And Detective Novoa.

Q And Detective Novoa. You mean that Detective Novoa physically stole it and put it into a valise?

A No, sir.

Q Who is the person, to your recollection, that took the merchandise physically and put it into the valise?

A Myself and Detective Daly.

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MR. COSTELLO: I have some redirect in view --

THE COURT: No, you don't. You are finished.

MR. COSTELLO: Your Honor --

THE COURT: You will be excused.

(Witness excused.)

MR. COSTELLO: I asked the Court to permit me to cross-examine --

THE COURT: You had your chance for cross-examination.

MR. COSTELLO: There was just certain additional information given to me.

THE COURT: All right, you have finished. Take your seat.

Will the government call its next witness.

MR. GIULIANI: The government calls John Kid.

MR. COSTELLO: Your Honor --

THE COURT: Yes?

MR. COSTELLO: All right, I will take this up with you later.

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J O H N K I D, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Sir, how are you employed?

A I'm a detective with the New York City Police Department.

Q How long have you been employed in that capacity?

A Almost 11 years now.

Q With what unit are you assigned?

A My permanent assignment is to the Safe, Loft Truck Squad. Right now I am temporarily assigned to the Manhattan Burglary Squad.

Q I invite your attention to April 15, 1970, the early morning hours. I ask you whether you received a telephone call at that time?

A Yes, I did.

Q Where were you?

A At my residence.

Q Would you tell us that conversation?

A I got a phone call in the morning from one of the members of the Narcotics Division and I was told that we had a job, could I come in.

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Q Where were you told to go?

A I dont recall the exact address. It was some place in the 20's on the West Side.

Q Did you take your equipment with you?

A Yes, sir, I did.

Q Now, did you go to this address?

A Yes, I did.

Q Could you describe what happened when you got there?

A Well, I met one of the detectives from the Narcotics Unit on the street and I was taken upstairs to an apartment, went inside the apartment, and there were two closet doors which were locked. I was told we had to get into the doors. They expected to find narcotics in there. I picked open the locks on one of the doors. There was an empty suitcase with a residue of a white powder and a scale. Nothing else that I recall. I opened up the second closet door and there the closet was filled with brick-shaped packages which later turned out to be heroin and cocaine.

Q Would you tell us when you finally opened that second closet, did you say anything to the officers who were present?

A I remember closing the door slightly and asking

what was the largest narcotics seizure ever made and the question was returned, "Why?" And I said, "It looks like there is 50 to 100 kilos inside."

Q Could you tell us how these packages were wrapped?

A They were wrapped in a South American county's newspapers. I don't recall the country right now. They were in full-kilo and half-kilo sizes.

Q How many officers were inside the apartment when you arrived?

A I believe there was two officers and myself.

Q Who were they?

A Of the three officers that were involved, I'm not sure which two were in the apartment. I believe it was Detective Aguiluz and Detective Daly.

Q After you had informed them of what you had observed inside the closet, what happened?

A Well, we started counting the brick-shaped packages.

Q Where were they placed?

A On the living room floor. A phone call was placed to the narcotics office and various bosses started to arrive along with the newspaper media, television personnel, et cetera.

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Q Did there come a time when Detective Novoa came?

A Yes, there was. I don't recall exactly when.

Q Did you have a partner at that time?

A At that time I was working with Detective Bob McDermott. While we were in the apartment we were told we may have to check a second place. I called Detective McDermott in the office and told him that he would have to come up there and he arrived at a later time also.

Q During the period that you were in the apartment do you recall whether Detectives Aguiluz and Daly were in your presence each and every moment of the time?

A I don't recall leaving the apartment and I don't really recall if I went to the John or were in the same room. I really couldn't say.

Q Let me show you what has been marked as Government's Exhibit 3 in evidence, and I will ask you whether you can identify that photograph?

A Yes, I can.

Q Would you tell us about that?

A It was a photograph taken at the particular apartment and it was sent to me from the three detectives, Aguiluz, Novoa and Daly, sometimes afterwards.

Q Are you present in the photograph?

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A Yes, I am second from the left.

MR. FELD: I have no further questions.

THE COURT: All right, Mr. Costello.

CROSS EXAMINATION

BY MR. COSTELLO:

Q Detective, I am going to ask you a few questions, if I may. By any chance do you have your UF 16 with you today?

A I believe the UF 16 is a memo book?

Q Yes.

A No, I don't.

Q You are just testifying from recollection as to the events of that day; is that right?

A That is correct.

Q In fact, on that day I think you told the ladies and gentlemen of the jury you were at home when you received a telephone call?

A That is correct.

Q And was your home at that time in Co-Op City in the Bronx?

A That is correct.

Q Did the call come from Joe Novoa?

A I don't recall who I got the phone call from, counsellor.

* * * * *

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the prejudicial conspiracy, and in spite of the mini-instructions I ask your Honor to carefully consider that, and I do want to raise again my severance motion.

THE COURT: Well, I hate to be consistent, and I deny it.

Okay, let us get started.

(In open court.)

THE COURT: All right, Mr. Clerk, will you bring the jury in.

(Jury in the box.)

THE COURT: All right, the government may call its next witness.

MR. FELD: The government calls Gene Louis Ferrar.

G E N E L O U I S F E R R A R, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Mr. Ferrar, what is your occupation?

A I am a detective with the New York City Police Department, assigned to the Crime Laboratory. I am a chemist there.

Q And how long have you been associated there?

A It will be eight years this June.

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Q And could you tell us your duties?

A Yes. I perform chemical analysis on narcotics, amphetamines, barbiturates, hallucogenics, alcohol and tranquilizers.

Q In April of 1970 were you engaged in the same work, is that correct?

A That is correct.

Q Can you tell us what your formal education in the field of chemistry is?

A Yes. I have an associate degree in forensic science. I have a Bachelor of Chemistry degree, and I am completing my thesis now for my Master's in Forensic Science.

Q Can you briefly describe the specific training you received in drug analysis?

MR. SCHWARTZ: Your Honor, I for one will join with the other counsel and will stipulate to the witness' qualifications.

THE COURT: All right, is that acceptable to the government?

MR. FELD: Acceptable to the government.

MR. COSTELLO: Entirely acceptable to the defendant Novoa.

THE COURT: All right, then the defendants concede

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the witness' qualifications as a chemist.

All right, go ahead.

BY MR. FELD:

Q Directing your attention to April of 1970, did you have occasion to conduct a chemical analysis on a large quantity of drugs under Police Laboratory No. 16345?

A That is correct.

Q And that involved some four suitcases approximately of alleged narcotics?

A That is correct.

Q And did you prepare a report showing your findings?

A That is correct.

MR. FELD: May we have this marked as Government's Exhibit 5 for identification.

(Government's Exhibit 5 was marked for identification.)

BY MR. FELD:

Q Let me show you Government's Exhibit 5 for identification, and I will ask you whether you can identify that (handing).

A I can identify it.

Q Does that bear your signature?

A That is correct.

Q Can you tell us what that is?

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A This is a crime laboratory report showing the analysis of what I did on the four suitcases.

Q And can you tell us your findings?

A Yes. Suitcase A contained 22 --

MR. SCHWARTZ: Your Honor, at this time I have to object in light of the prior discussion and ask your Honor at this time for a limiting instruction.

MR. STONE: May I also join with that in behalf of Defendant Papadakis, that this testimony is not offered against them.

MR. FELD: No, your Honor, it is offered.

THE COURT: No, this is -- for example, the counts against Papadakis, who is charged with the transaction in narcotics,and I think this is proof for which the government will wish to argue the evidence will justify a finding by the jury that he was involved with narcotics. I think this is against all three.

MR. FELD: That is correct, your Honor.

MR. STONE: I would note my objection.

THE COURT: I think this is perfectly proper in a narcotics charge, to prove in fact that the substances were narcotics.

All right, go ahead.

A Suitcase A, No. 1, 22 packages - 21 pounds plus

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11 ounces -- Cocaine present.

2. 19 packages - 20 pounds plus 12-1/2 ounces -- heroin present.

Suitcase B 12 packages - 27 pounds, 0 ounces -- heroin present.

2. 12 packages - 24 pounds plus 3 ounces -- cocaine present.

Suitcase C, 25 packages - 30 pounds plus 10-1/2 ounces -- heroin present.

2. 35 packages- 42 pounds plus 4 ounces -- cocaine present.

And D, No. 1, 9 packages -- 9 pounds plus 11 ounces -- Heroin present.

2. 38 packages - 43 pounds plus 9-1/2 ounces -- Cocaine present.

Q And who were these narcotics received from?

A Who they were received from?

Q Yes.

A I received it from one of my supervisors in the crime laboratory.

MR. FELD: All right, let me show Government's Exhibit 5 to defendants. We offer 5 for identification (handing).

MR.COSTELLO: Defendant Novoa consents to the

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introduction.

MR. SCHWARTZ: May I see that?

MR. COSTELLO: Yes (handing).

MR. STONE: Your Honor, I object to the relevance. He has already testified to that.

THE COURT: I will permit it.

Mark it.

MR. SCHWARTZ: Your Honor, I join in that.

THE COURT: Overruled. Mark it.

(Government's Exhibit 5 for identification was received in evidence.)

THE COURT: Let me see it, please.

(Handed to the Court by the clerk.)

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THE COURT: I take it that the pounds and ounces in these descriptions that you read to us are the weight of the number of packages shown.

THE WITNESS: That is correct.

THE COURT: And in each case you show that as to packages either heroin is present or cocaine present?

THE WITNESS: That is correct, your Honor.

THE COURT: But you don't attempt to state what is the percentage of each.

THE WITNESS: At that time we weren't required as far as the New York State Penal Law to put down percentage; that is, the weight of the powder alone which contains the narcotics substance in the powder.

THE COURT: I see. All right.

Q Mr. Ferrar, after you conducted your analysis of the narcotics in those suitcases, what did you do with the narcotics?

A I wrapped the narcotics back in its original envelope. I put my seals around it and then put them back in the suitcase that I obtained them from. I then sealed the suitcase and I am not sure, but I thought it was picked up by Internal Affairs. If it wasn't, it was put into the vault.

Q That was the Property Clerk's Office?

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A That was the police crime lab.

Q Wouldn't it ultimately be presented to the Police Property Clerk?

A Yes, that is correct.

MR. FELD: I have no further questions.

MR. COSTELLO: If I may, your Honor.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. COSTELLO:

Q Over the years you as an expert have examined many samples of narcotics; isn't that so, sir?

A That is correct.

Q And even as an expert you cannot state with the required certainty which is cocaine and which is heroin; is that correct?

A That is incorrect.

Q That is incorrect?

A That is correct.

Q Fine. That was my next question. You anticipated it, sir. Thank you.

It is possible for an expert to look at a bag, two bags, and determine which is heroin and which is cocaine?

A Not look at it. Test the two bags.

* * * * *

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MR. FELD: No.

THE COURT: All right, then, there is no problem.

(In open court.)

MR. GIULIANI: The government calls Nicholas Lamattina.

N I C H O L A S L A M A T T I N A, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GIULIANI:

Q Mr. Lamattina, would you please keep your voice up so that everyone can hear you.

Mr. Lamattina, were you formerly employed by the New York City Police Department?

A Yes, I was.

Q When did you become a New York City Policeman?

A June, 1957.

Q Would you give us a brief account of your history in the New York City Police Department, stating where you were assigned and when?

A After I got out of the Police Academy in 1957 I was assigned to the 8th Precinct. I was there approximately a year. I was assigned then to the 9th Precinct for approximately seven or eight years. Then I got an

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assignment to the Detective Division Youth Squad for approximately two years. From there I got assigned to the Narcotics Division in 1967 up until 1969, where I got transferred to the First Squad. From the First Squad I got transferred to the Third District Burglary and Larceny Squad.

Q Were you assigned to the First Squad between 1969 and 1972, approximately?

A Yes, sir.

Q Tell us where the First Squad offices are located?

A The First Squad was located at the 1st Precinct Stationhouse on Old Slip between South and Water Streets.

Q Do you know where the SIU was?

A The SIU office was on the fourth floor of the same building.

Q The same building?

A Yes, sir.

Q Directing your attention to on or about April 15, 1970, did you become aware around that time about the seizure of approximately 100 kilos of heroin and cocaine?

A Yes, I did.

THE COURT: Now, Mr. Giuliano, I didn't inquire before, but I should. As I understand it, the testimony

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of this witness is offered against the defendant Novoa only.

MR. GIULIANI: That is right, your Honor.

THE COURT. I take it in connection with the first three counts?

MR. GIULIANI: That is right, your Honor.

THE COURT: All right.

So, members of the jury, you will understand, I emphasize, the testimony of this particular witness is not offered against the defendant Papadakis or the defendant Nieves, but only against Mr. Novoa.

Q Now, again, let me ask you this: do you know a detective named Joseph Novoa?

A Yes, I do.

Q Do you see him in this courtroom?

A Yes.

Q Can you tell me where he is seated?

A He is sitting on my right, the second gentleman from my right.

THE COURT: Do you concede that identification?

MR. COSTELLO: Yes.

THE COURT: All right, the identification is conceded. The record will show it.

Q Do you also know a detective named Peter Daly?

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A Yes, I do.

Q And a detective named Carl Aguiluz?

A Yes.

Q Which one of those three detectives did you meet first?

A Detective Daly I kna/ first.

Q I can't hear you.

A Detective Daly.

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Q Again directing your attention to approximately the period of time within two or three weeks of April 15, 1970, approximately two or three weeks after April 15, 1970, did you have occasion to meet with an attorney, a Michael Santangelo?

A Yes, I did.

Q And where did that meeting take place, as best you remember?

A On the corner of the Criminal Court Building at 100 Centre Street, in front of the coffee shop.

Q That is in Manhattan?

A Yes.

Q Will you tell us as best you remember what you said and what Mr. Santangelo said at that time?

A I spoke to Mr. Santangelo. I told him --

MR. COSTELLO: I object to this, your Honor, unless Mr. Santangelo is going to be produced and will corroborate this witness' testimony.

THE COURT: Objection overruled.

MR. COSTELLO: Note my exception, sir.

THE COURT: Yes.

(Record read by the reporter.)

Q Will you tell us, Mr. Lamattina, what you said to Mr. Santangelo and what he said to you, as best you

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remember?

A I went over to Mr. Santangelo. I told him my name was Nick Lamattina "And my cousin Nicky says you wanted to speak to me about something."

So he says, "Yes. I represent one of the detectives in the -- one of the defendants in the 100 kilo case, and I was wondering if you could speak to the officers to see if anything could be done."

So I said, "Yes, I will," and I told him that I would get back to him and I left.

Q What did you do as a result of that, if anything?

A I contacted one of the detectives involved in the arrest.

Q Do you remember which one you contacted?

A I believe it was Detective Daly.

Q Did you have a conversation with Detective Daly?

A On the phone, I told him I would like to see him.

MR.COSTELLO: I am sorry, I did not hear the answer.

(Answer read.)

A (Continuing) And I made a meet with Detective Daly tomeet me by the squad.

Q And did you meet with Detective Daly?

A Yes, I did.

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Q And where did this meeting take place?

A This meeting took place on South Street in the vicinity of the First Precinct Station House.

Q How close to the First Precinct?

A Maybe a block or two away.

Q And was anyone else with Detective Daly at the time you met with him?

A Yes, there was Detective Novoa, Detective Aguiluz and Detective Daly.

Q And where did you meet, if you remember?

A We met in an automobile.

Q Do you remember the kind of automobile?

A It was a dark car -- I think it was a Buick Skylark or something.

Q Did you have a conversation?

A Yes, we did.

Q Will you tell us what you said and what the other participants in the conversation said?

A I explained to the detectives that I spoke with Michael Santangelo, the attorney on the case that they had, and if they could do anything for the defendant that he was representing, and they said they can but Michael Santangelo has to show good faith in a matter that he had that they had previously with the attorney Santangelo where

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he owed them $5,000.

MR.COSTELLO: Your Honor, may we have who said what to whom?

THE COURT: Yes.

MR. COSTELLO: Allegedly, and by designation as to the statements?

THE COURT: This is the conversation, I take it, between you and Daly?

THE WITNESS: There was the three officers in the car.

THE COURT: Three officers in the car.

THE WITNESS: With me, right.

THE COURT: Yes.

Now, can you tell which officer said what?

THE WITNESS: If I remember correctly Detective Novoa mentioned to me that Michael Santangelo owed him $5,000.

THE COURT: All right.

THE WITNESS: And they all agreed that -- they all agreed to the fact that before any other dealings would be done with Santangelo he has to show good faith by producing $5,000.

Q Do you remember anything else about the conversation?

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A And I told him that I would get in touch with Michael Santangelo and I will take care of it and get back to them.

Q Did you meet with Mr. Santangelo?

A Yes, I did.

Q Approximately how long after?

A Maybe a day or two later.

Q And can you tell us where you recall meeting with Mr. Santangelo?

A On Baxter Street.

Q And did you have a conversation?

A Yes. I told Mr. Santangelo that the detectives would consider doing something for him if he would show good faith by paying the balance of a previous case they had with him of $5,000.

Q What did Mr. Santangelo say?

A He said "I'll take care of it and get in touch with me."

Q Did you have any further meeting with Mr. Santangelo?

A I then met Mr. Santangelo a couple of days later.

Q Do you recall, Mr. Lamattina, where that next meeting took place?

A That also took place on Baxter Street between

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Bayard and Canal, in the foyer between Val's Bar and a bail bond office.

Q Can you tell us what you said to Mr. Santangelo and what he said to you?

A He gave me an envelope. He said, "This is the balance of what I owed them."

And I said "Okay, I'll bring it to them and I'll get back to you later and tell you what could be done with the case".

Q And what did you do?

A I got in touch with the detectives and I met them on South Street.

Q Do you recall which detective you called or got in touch with?

A No, I don't.

MR. COSTELLO: Can we have a time and date, your Honor?

THE COURT: Yes.

Q Do you remember approximately when this was in relation to the April 15th 100 kilo seizure?

A The most it could have been, if I am correct, would be a matter of two weeks or three weeks -- maybe longer.

I am sorry, I didn't catch that question.

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Q Question withdrawn.

A Would you repeat that.

Q Withdrawn.

Can you tell us where the next meeting took place with the three detectives?

A On South Street.

Q And who was present at that meeting?

A The three detectives, I believe, was there.

MR. COSTELLO: The time and place, your Honor.

THE COURT: Yes.

Q Well, do you recall the approximate time of that meeting?

A No, sir.

Q Was it in daytime or nighttime?

A Daytime.

MR. COSTELLO: I object to this leading, your Honor. He is practically testifying for the man.

THE COURT: No, no, I will permit it.

Q Do you recall what was said and what was done, Mr. Lamattina?

A I gave the detectives the money and I asked them if they wanted to do anything with the case they presently have now, and they said, "Yes."

Q Mr. Lamattina, excuse me, do you recall who

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you handed the money to, if you recall?

A I don't remember who I handed the money to, no, sir.

Q And what happened after you handed them the money?

A We were discussing the 100 kilo case, a price of what would be wanted by the detectives.

Q And when you say "we were discussing", who was present?

A Detectives Novoa, Aguiluz and Daly.

Q And who was speaking, if you remember?

A Well, we were all talking. I mean, it wasn't any one particular person. We were just -- you know, every time I said something, one would answer, then the other would answer. They all would agree.

MR. COSTELLO: I object to this characterization, your Honor. We want to know who said what to whom, when and where.

THE COURT: If you are able to do it.

THE WITNESS: No, sir.

THE COURT: He says he can't. All right.

Q Will you tell us as best you remember what occurred at this conversation?

A I asked them what could be done with this case and they said they could take care of it, and the price was

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$125,000.

I said to them "$125,000 is a lot of money".

They said "Well, the defendants got it and if we are going to do anything it's got to be that because it is kind of risky, and, you know, we have to find a way to take care of it."

Q What else was said?

THE COURT: When this conversation was had I take it all three of the detectives were there?

THE WITNESS: That's right.

THE COURT: But you cannot tell which one said this to you?

THE WITNESS: I don't remember which one said precisely what I just said.

THE COURT: All right.

Q Do you remember anything else of that conversation?

A I spoke to them and they told me "What would be your end of it?"

I said, "Don't worry about my end of it".

I said "If you want to do something for me, okay."

Then I was informed by the detectives that two of the other defendants were going to be cut loose in the next court appearance and that the attorney -- that was

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Ben Gold, and that if I wanted -- and that the defendant had $24,000 in a bankbook that the lawyer was holding, that if I would go up to see the attorney, Ben Gold and see if I could make a deal for myself where I could make a score, that's all right.

So I told them "Okay, thank you," and I will get in touch with them and I left.

MR. COSTELLO: May we have the detective identified who allegedly made the statement, your Honor.

THE COURT: Yes. Was it the same three detectives present?

THE WITNESS: Yes, sir.

THE COURT: Can you tell which one of them made this last statement to you?

THE WITNESS: No, sir.

THE COURT: He says he can't.

MR. COSTELLO: May we have the time, your Honor?

MR. GIULIANI: We have already set the time the best the witness can do it.

THE COURT: When was it?

MR. GIULIANI: It was a few weeks April 15, 1970 in South Street in daylight.

THE COURT: Is that right?

THE WITNESS: Yes, sir.

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Q Did there come a time shortly after this when you again met with Mr. Santangelo?

A Yes, I did.

Q Can you tell us approximately how long after the last meeting you related that was?

A About maybe a day or two after that I got in touch with Michael Santangelo.

Q And approximately at what time of the day?

A It was in the afternoon.

Q Where did you meet?

A On Baxter Street between Bayard and Canal.

Q Will you tell us what you said to him and what he said to you?

A I met Michael Santangelo on BaxterStreet, between Bayard and Canal, and I said, "Let's walk," and we took a walk on Baxter Street, north on Baxter Street to Canal, and we went east on Canal Street, took a walk around the block, and I was telling him I met with the detectives and that they want $125,000 on the case.

Michael Santangelo at that point got angry, and he says, "What, are you crazy?"

He says, "I don't have that kind of money. All I got was $300,000. $200,000 I had to put up in bail. I am entitled to at least 50,000 for myself".

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He says, "If there is anything in it for anybody it's 50,000."

And he said, "Besides, them cops are crazy, because I've got witnesses against them saying that they came to New Jersey in a motel, they picked up the defendants there, they beat them and took them to New York and arrested them."

And I told him "Okay," and I left.

MR.COSTELLO: May we have the time and date, your Honor, for this alleged conversation?

MR. GIULIANI: We have already set a time, your Honor. He said it was a few days after the last meeting in the daytime, and he gave the location.

THE COURT: All right.

Q Within the next few days did you again meet with the three detectives?

A Yes, I did.

Q Can you tell us approximately how long after your last meeting with Mr. Santangelo that took place?

A I believe that was a short time after, within a day or so.

Q And where was it?

A I believe I met them in a car.

MR.COSTELLO: The time and place, your Honor.

THE COURT: Yes; where was it?

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THE WITNESS: I think by the office again, by South Street.

THE COURT: On South Street -- the office of the -- what is it -- the First Precinct?

THE WITNESS: The First Precinct.

THE COURT: Do you remember what time of day it was?

THE WITNESS: I don't recall whether it was day or nighttime, no.

THE COURT: All right.

Q Who was present, if you recall?

A I believe the three detectives.

Q Which one?

A Detective Novoa, Aguiluz and Daly.

Q Did you have a conversation with him?

A Yes.

Q What did you say to them and what did they say to you?

A I told them I spoke to the attorney, Michael Santangelo, and that there isn't that kind of money around. All he got was $50,000, and I also gave him the information that the attorney had witnesses ready to come to court to state that they had taken the defendants from New Jersey to New York and the witnesses included a hotel -- a motel

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manager, a police officer from the town, and a State Trooper, and I told them, I think that they are crazy, this looks like a stinker, and they shouldn't even be bothered with it.

Q What was said by any other three detectives, and if you can identify the detective, do so?

A I believe it was Detective Novoa who said that "There is no problem, that it has nothing to do with us, and there is no problem so far as the case is concerned about the witnesses that Michael Santangelo would produce."

Q Any further conversation?

A No, sir.

Q Prior to April 15, 1970 had you met Detective Novoa before then?

A Yes.

Q On how many occasions?

A On several odcasions.

Q Can you tell us the first time you remember meeting him?

A I spoke to Detective Novoa one day, during the day on Baxter Street regarding a case where he was the arresting officer, and I told him, "I know someone who is interested in that case," if he can do anything with it, and he says he probably can take care of it --

THE COURT: Wait. Do we need this?

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MR. GIULIANI: Pardon me?

THE COURT: Is this just to prove when he knew Detective Novoa?

MR. GIULIANI: No, prior similar actions.

THE COURT: No, I won't permit it.

Q Did there come a time, Mr. Lamattina, when you were indicted in approximately June of 1972 for bribery, obstruction of justice and possession of government property?

A Yes.

Q Would you tell us what that case involved, briefly?

A That case involved an attorney named Edmund Rosner and an investigator by the name of Nicholas de Stefano. It was a case where Edmund Rosner and Nicholas de Stefano had a pending case in the Southern District, and I introduced them to another detective who was supposed to purchase 3500 material and other material that would help them in their case.

Q And did you at some point in November 1970 plead guilty to that charge, or the charges contained in that indictment?

A Yes, sir, I did.

Q November 1972.

And was that in this court?

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A Yes, it was.

Q Can you tell us what you pleaded guilty to, as best you remember?

A I pleaded guilty to conspiracy, bribery and obstruction of justice.

Q Did there come a time in February of this year when you were sentenced by Judge Bauman?

A Yes.

Q And what sentence did you receive?

A A year and a day.

Q Are you serving that sentence right now?

A Yes, I am.

Q Have you been offered, promised or have you been told you would receive anything in return for your testimony in this case?

A I was not promised anything.

Q Will you tell us, Mr. Lamattina, as a police officer, during the time you were a police officer the kinds of crimes that you committed?

A There were several cases involving fixes where I was the middleman, where I contacted the police officers and made deals for other people, and I would carry big money to the police officers concerned in the matter.

I also took money from defendants -- things like

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that.

Q Can you tell us the amount of money you took from defendants?

A Sometimes hundreds, sometimes thousands. One time I got $5,000.

Q Was that with other detectives?

A Yes, but not to their knowledge.

Q Now did there come a time in February of this year when you were first questioned about the incidents involved in this case that you just testified to?

A Yes.

Q And did you fail to remember the involvement of Michael Santangelo?

A Yes, I did.

MR. COSTELLO: Oh, objection, your Honor. He is testifying again. He is doing this repeatedly.

THE COURT: No, I will permit it. Overruled.

Q Did you deny that Michael Santangelo was involved?

A Yes, I did.

Q Did you take a lie detector test on that?

A Yes.

Q Did you fail the lie detector test?

A Yes.

MR. GIULIANI: No further questions, your Honor.

* * * * *

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some kind of a mark to identify the exhibit or the 3500 material that your Honor turned back to the government?

THE COURT: Yes, it has been marked 3517 for identification.

MR. SCHWARTZ: May we somehow preserve it in the record?

THE COURT: Well,under the rules it is the government's duty to preserve it.

MR. SCHWARTZ: Yes, I am just saying.

THE COURT: Well, I assume the government is familiar with the statute.

All right, Mr. Clerk.

(Jury in the box.)

N I C H O L A S L A M A T T I N A, resumed.

THE COURT: All right, Mr. Costello.

CROSS EXAMINATION

BY MR. COSTELLO:

Q Mr. Lamattina, is that the correct pronunciation?

A Yes.

Q Did you testify before the grand jury on or about March 19, 1974?

A Yes.

MR. COSTELLO: I request that this be marked -- Defendant Novoa offers it in evidence.

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THE COURT: Any objection?

MR. GIULIANI: No objection.

THE COURT: All right, without objection it will be received. Mark it as the next defendant Novoa's exhibit.

(Grand jury minutes marked Defendnat Novoa Exhibit F in evidence.)

BY MR. COSTELLO:

Q Mr. Lamattina, for how many years were you a police officer?

A Approximately 16.

Q And during that period of time you learned,did you not, that the questions propounded by attorneys are not evidence; that it is only the answer of the witness, isn't that so?

A I do not know.

MR. GIULIANI: Objection, your Honor.

THE COURT: Mr. Costello's statement is perfectly correct. The question is never evidence; it is only the answer.

All right, I have told the jury that before.

MR. COSTELLO: Thank you, your Honor; accepted without question by the defendant Novoa and myself.

Q Now when you testified in the grand jury on March 19, 1974 did you give responsive answers or did you

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in substance answer merely "Yes" or "No" to the questions put to you by the United States Attorney Joseph Jaffe?

MR. GUILIANI: Objection.

THE COURT: Sustained. The record is in evidence, and if that is a fact you can argue it to the jury in summation.

Q Would you tell the ladies and gentlemen of the jury when you flunked your lie detector test?

A Some time in March.

Q Of what year?

A Of '74.

Q Who was present when you took this lie detector test?

A Myself and the -- the fellow that was giving me the test.

Q Were United States Attorneys present, sir?

A No.

Q Where was the test conducted?

A In Manhattan.

MR. COSTELLO: May we have the list of the questions put to this witness by the personconducting the test?

MR. GIULIANI: I am not sure we have that, your Honor. I will search for it.

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THE COURT: All right, while they are looking for that you can cover anything else.

Q Who is Robert Luci? Do you know Luci?

A What is the question?

(Question read.)

A Yes, sir.

Q Tell the ladies and gentlemen of the jury who Luci is.

A Robert Luci was -- is a detective assigned -- was assigned to the narcotics divison.

Q Did there come a time when you and another man tried to kill Robert Luci?

MR. GIULIANI: Objection, your Honor.

THE COURT: Yes, I will have to sustain the objecti This would be a prior misconduct not resulting in a conviction. I do not think it is admissible.

Q Did Robert Luci go to you equipped with a Minifon or some other type of wire recorder to discuss criminal activities with you?

A Yes, he did.

Q And was that in regard to the stealing of evidence

A Yes.

Q Was that in regard to the perversion of justice?

A Yes.

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Q And was that in regard to a disruption of police department functions in their attempts to apprehend criminals?

A No.

Q How long were you in narcotics before Luci caught you?

A Before what?

(Question read by the reporter.)

A This was after I was out of narcotics.

Q Tell the ladies and gentlemen of the jury how long you were in narcotics before you got out of narcotics?

A About --

Q Time, dates and places, please.

A About 2-1/2 years.

Q From what date to what?

A From 1966 or '67 to '69.

Q Do youknow Frank Ramos?

A No.

Q Did you ever hear of Frank Ramos being one of the biggest narcotic brokers in the City of New York?

A No.

Q Do you know Carl Aguiluz?

A Who?

(Question read by reporter.)

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A Yes -- Detective Aguiluz.

Q Yes?

A Yes.

Q Do you know his brother-in-law, Salvador or Frank Boutureira?

A No, I don't.

Q Does Carl Aguiluz ever discuss with you a pay-off to Frank Ramos of etiher $10,000 in United States currency or a kilo of narcotics?

A No.

Q How long had you known Carl Aguiluz?

A Just a short period of time.

Q Where did you meet him?

A I met him through Detective Daly.

Q When?

A Around April of -- when they made the arrest of the 100 kilos.

Q So are you telling the ladies and gentlemen of the jury you met Detective Daly for the first time --

A No.

Q -- in April of 1970?

MR. GIULIANI: Objection, your Honor. That isn't what he said.

MR. COSTELLO: I am asking him if that is what he

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said.

Q What did you say, sir?

A I said I met Detective Aguiluz during the time of the arrest they made with the 100 kilos.

Q When for the first time did you meet Detective Daly?

A Detective Daly I met while assigned to the Narcotics Bureau -- '68, '67, some time around there.

Q Well, this morning didn't you tell the ladies and gentlemen of the jury that of the team mentioned,Daly was the only one thatyou knew? Didn't you testify to that?

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained.

Q What did you -- withdrawn.

Did you have a conversation in the Criminal Court building?

A Yes, I did.

Q With whom?

A With Michael Santangelo.

Q And when did this conversation take place?

A I don't recall the date but it was during the day time.

Q Were you still dealing in narcotics?

A Was I what?

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Q Were you still dealing in narcotics?

MR. GIULIANI: Objection, your Honor. There is no testimony that he was dealing in narcotics at any time.

THE COURT: Sustained.

Q Had Luci turned you in yet?

A Luci did what?

(Question read.)

A Luci turned me in? Yes.

Q When?

A July.

Q Of what year?

A 1972.

Q Where did the conversation that Luci recorded take place?

MR. GIULIANI: Objection to the relevancy, your Honor.

THE COURT: Sustained.

Q Do you remember the date tha you first met Luci?

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained. I think we have had enough of Luci.

MR. COSTELLO: Very well, your Honor.

Q We will go on to the next person that you know -- Carl Aguiluz.

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When did you say you met Carl Aguiluz?

A Around the time that they made the arrest, shortly after they made the arrest of the -- of the 100 kilos.

Q And when do you say that you met Detective Novoa?

A I believe it was either at that time or before -- I am not too sure -- I believe it was before the arrest on that.

Q Where did you meet Detective Novoa?

A I met him, I believe, it was on Baxter Street one day.

Q When?

A I don't recall the date.

Q When was the next time that you saw Detective Novoa?

A The next time I saw Detective Novoa, I believe it was at the time we were discussing the 100 kilo case the first time.

Q Where was that?

A That was on South Street.

Q What was the date?

A I don't recall the date.

Q What was the month?

A I don't remember the month.

Q Was the seizue of 100 kilos by Detective Novoa

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and Detective Daly the largest narcotics seizure in the history of the New York Police Department?

A I don't know if it was -- I guess -- I am not sure, I don't know.

Q Were you on the job at the time?

A I was.

Q Were there published reports in the newspapers?

A Yes, there was.

Q Were there published reports in the PBA Journal and other police publications to the effect that it was the largest narcotics seizure in the history of the Police Department?

A I don't know if it was in the DA -- what?

Q The PBA Journal -- the Patrolmen's Benevolent Association.

A Thank you. No, I don't recall reading it in the PBA Journal. I remember reading about it in the newspapers.

Q Who was the first person you had a conversation with in regard to the team of Aguiluz, Daly or Novoa?

A I believe it was Detective Daly.

Q Why did you select Detective Daly to talk to?

A Because he was the one I knew. I didn't know Detective Novoa or Detective Aguiluz but I knew --

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Q You did not know either one of them --

A No --

Q Is that your testimony?

A Yes.

Q When do you say that you met Detective Daly?

A I didn't meet him. I called him on the phone.

Q You called him on the telephone, sir?

A Yes.

Q From where?

A I don't remember from where.

Q Will you tell the jury what you said to Detective Daly?

A I asked -- I spoke to Detective Daly. I said "Pete, it's me, Nick Lamattina. Can I see you about something?"

He said, "Okay," and I told meet me by the office, I am working a day tour -- I don't recall what I said to him exactly but I made a meet with him.

Q Would it be fair to say that in those days, at the time you made the telephone call, you say, to Detective Daly, you had the reputation of being a fixer and a crooked cop?

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained.

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Q What do you say Detective Daly said to you after this telephone call?

A He said "I'll meet you."

Q Where?

A On South Street by the office.

Q Had you ever had a conversation with Detective Daly prior to the telephone call?

A I don't recall if I did.

Q You told the ladies and gentlemen of the jury you didn't think you knew Detective Novoa; you told the ladies and gentlemen of the jury you telephoned Daly; is that correct?

A That is correct.

Q You are now telling the ladies and gentlemen of the jury that was your first telephone call with Daly?

A Pertaining to this matter, yes.

Q Pertaining to any matter.

A I spoke to Detective Daly several times, many times.

Q Where?

A In the office.

Q When?

A When we were working in the office together -- when the office was all one office.

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Q Would you say you were a friend of his?

A Friend? Yes -- acquaintances -- acquaintance - not a friend, no.

Q Good friend?

A No.

Q Confidant?

A Pardon me?

Q Confidant?

A No, whatever that is -- no.

Q Had you gone out drinking with Detective Daly?

A No.

Q Had you had lunch with him?

A Once or twice.

Q Incidentally, did you ever have lunch with Carl Aguiluz and Boutureira -- Salvador?

A No, sir.

Q Did you ever go to the Cafe Madrid?

A No, sir.

Q Now you don't recall the date or the hour that you made this telephone call to Daly, is that correct?

A No, I don't.

Q Where was the telephone call made to?

A To the office, the SIU office.

Q Who answered the phone?

A Whoever was on duty. I don't recall who was on

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duty at the time. They usually have some officer on duty answering phones.

Q And then what happened?

A He wasn't there, and I left a message or he answered the phone, I don't recall.

Q You don't remember whether he was there or whethe he answered the phone or whether you left a message, is tha right?

A That is correct.

Q And you don't remember the date or the hour, is that correct?

A That is correct.

Q But you do remember calling him, and you say you talked to him, is that your testimony?

A Yes.

Q Now as a result of this conversation what happened if anything?

A I made a meet and he met me on South Street by the First Squad Office.

Q You say you made a meet. Will you tell the ladies and gentlemen of the jury what that means?

A A meet is like when you contact someone else and you tell him "This is Nick calling, I would like to see you. Would you meet me on South Street and Old Slip

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at such and such a time."

Okay, we go there and the party that you spoke to is there. That's a meet. It's like a date.

Q Excuse me, did I cut you off?

(Last part of the answer read by the reporter.)

Q "Like a date". Could you tell the ladies and gentlemen of the jury the hour and the date that you made this appointment?

A I don't recall the hour except that it was daytime, and I don't recall the date.

Q But didn't you tell the ladies and gentlemen of the jury this meet was a date?

A It's like a date. I call up a girl, "Do you want to meet me on the corner. You meet me."

THE COURT: Well, let's go on --

A (Continuing) That's what it is -- a meet is a meet.

THE COURT: We do not need a lesson in grammar. here.

MR. COSTELLO: Thank you, your Honor.

Q Where did you keep your appointment with Daly?

A On South Street between Old Slip and Wall Street, I believe.

Q What time?

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A In the daytime.

Q Could you approximate it?

A He has already saidhe can't, so let us proceed.

Q You met Mr. Daly where? On the street?

A On South Street between Old Slip and Wall, in an automobile.

Q Now how do you say was in the automobile?

A Detective Novoa, Detective Aguiluz and Detective Daly.

Q Did you recognize Detective Novoa?

A Yes.

Q Had you seen Detective Novoa since the first time you met him on Baxter Street?

A Yes.

Q When had you seen him?

A I had seen him several times in Brooklyn.

Q Had you also seen his picture in the paper?

A Yes.

Q When you saw him in Brooklyn did you have a conversation with him?

A Yes.

Q Did you tell that to the jury this morning?

MR. GIULIANI: Your Honor, I asked him about that, and it was objected to.

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THE COURT: All right.

MR. GIULIANI: And the objection was sustained.

Q Could you tell the ladies and gentlemen of the jury when you saw Detective Novoa in Brooklyn?

A I had several meets with Detective Novoa in Brookly concerning another matter -- a matter other than the 100 kilo case.

Q Could youtell the ladies and gentlemen of the jury the time and the place of this -- was it a meet or meets?

A It was two or three meets.

Q All right, three meetings.

Could youtell the ladies and gentlemen of the jury where and when you first met with Detective Novoa in Brooklyn?

A I met Detective Novoa several times in Brooklyn at the White Tower Restaurant on Fourth Avenue in Bay Ridge, between 92nd and 94th Street in Brooklyn, at night.

Q Date and hour.

A In the evening.

Q The date that you met him, and the hour?

A The date I don't recall, and the hour I don't recall.

Q Do you recall the season, sir? Was it spring; was it fall; was it winter; was it summer?

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A It could have been fall -- I am not too sure about that.

Q Your first meeting was in Brooklyn, some time in the fall on a date and hour you are not sure of.

A That is right.

Q Now when did you have this second meeting that you say with Detective Novoa?

A I don't follow you. What do you mean by "second meeting"?

Q Well, correct me if I am wrong; I think you told the ladies and gentlemen of the jury that you said you had three meetings with Detective Nova in Brooklyn, is that correct?

A The same place in Brooklyn, by the White Tower Restaurant, the same place.

Q The date and the hour, please.

A No date, no hour -- I don't recall.

Q Could you tell us whether it was in the wintertime, the springtime, the summer or the fall?

A I believe it was the fall.

Q Since you have put us into the season, could you tell us the month in the fall and the date?

A I don't recall the month.

Q Do you recall the date?

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A No, sir.

THE COURT: It will be almost amiracle if he could, four years ago.

Q Do you have any -- did you make any reports? Did you meet with any agents relating to these conversations of meetings with Detective Novoa?

A When -- at that time?

Q No, at any time have you been interviewed by agents from the United States Attorney's office relative to these meetings?

A Yes.

MR. COSTELLO: May I have that, Mr. Giuliani?

MR. GIULIANI: For what, your Honor?

THE COURT: Statements made by the witness concerning his Brooklyn meetings in the White Tower Restaurant with the defendant Novoa.

MR. GIULIANI: They were in the nature of oral statements that weren't reduced to writing, then.

THE COURT: All right.

MR. COSTELLO: May I ask your Honor if there is any diary entry as to the dates that you had these conversations with Mr. Lamattina?

MR. GIULIANI: Yes, your Honor.

THE COURT: Do you have a diary?

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THE WITNESS: No.

THE COURT: Did you record this in a diary?

THE WITNESS: No.

MR. COSTELLO: I ask Mr. Giuliani if he had his diary.

MR. GIULIANI: I have diary entries concerning these meetings with Mr. Lamattina.

MR.COSTELLO: May I look at those?

MR. GIULIANI: May we approach the side bar?

THE COURT: No, I don't think so.

You may not look at them.

Let us go on.

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Q Now we will come back to Manhattan. What month of the year was this that the meeting took place in Old Slip?

A If the arrest was made in April, it had to be around May, I guess.

Q Don't guess, Mr. Lamattina. Tell the jury what you say you know.

A I don't recall the date or the time.

Q You don't recall any of those details?

A No, sir.

Q Will you tell the ladies and gentlemen of the jury what you do recall?

A What I recall is what I testified to this morning.

MR. COSTELLO: I have no further questions, your Honor.

THE COURT: All right.

Mr. Schwartz, do you have or Mr. Stone have any questions?

MR. STONE: I have no questions, your Honor.

MR. SCHWARTZ: No questions.

THE COURT: What about the questions on the lie detector test. Did you look for the papers?

MR. GIULIANI: I have that.

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THE COURT: I made a note of it for Mr. Costello. Give it to Mr. Costello. I interrupted you, Mr. Costello, and you are entitled to this.

MR. COSTELLO: Yes, thank you. Can I have this marked, your Honor, just this page? I would like to look at it all but I am referring specifically to that page.

MR. GIULIANI: Can we have it deemed marked, your Honor? Then we will make a photostatic copy. I have my own notes on it.

THE COURT: So that we have deemed marked Defendant Novoa's Exhibit G. A process copy will be substituted.

(Defendant Novoa's Exhibit G deemed marked in evidence.)

MR. SCHWARTZ: May we take a look at it?

THE COURT: Of course. It is not evidence as far as your clients are concerned.

MR. SCHWARTZ: Just out of curiosity.

THE COURT: All right.

BY MR. COSTELLO:

Q When did you take the lie detector test; do you remember?

A In March.

Q And you were asked a series of questions; isn't

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that so?

A That is correct.

Q Did you truthfully answer the questions?

A Yes, I did.

Q You told the truth in answering these questions; is that your testimony?

A I told what I believed, what I thought at that time.

Q I am sorry, Mr. Lamattina. Let me withdraw my question.

When you were taking the test for the lie detector you were asked a certain series of questions by the examiner; is that correct?

A That is right.

Q Did you answer those questions truthfully?

A What I believed was true, I answered.

Q You say what you believed was true. Is that correct?

A That is right.

Q Isn't it a fact that you never gave a quarter, a penny or a dime to Detective Novoa?

A That is not true.

Q You understand that you are under oath today?

A Yes.

Q You are saying that you are now telling the truth; is that your testimony?

A Yes.

Q And you are also saying that you were telling the truth when you took the lie detector test?

A When I took the lie detector test I believed that I didn't deliver anything to the officers. That is what I believed when I took the lie detector test. When I answered the lie detector test I answered to what I in myself thought was the truth.

Q You honestly and truly believed that you never delivered anything to Detective Joseph Novoa; isn't that the fact?

A That is right, sir.

MR. COSTELLO: No further questions.

THE COURT: Anything else, Mr. Giuliani?

MR. GIULIANI: Just one or two things, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. GIULIANI:

Q Detective Lamattina, or Mr. Lamattina now, I guess it is, you told us when you were asked on cross-examination whether you had met Detective Novoa in

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Brooklyn on three occasions at a White Tower, was it?

A Yes, sir.

Q And you were asked whether you made any notes of that meeting?

A Yes.

Q And you didn't?

A No, I didn't make no personal notes.

Q Can you tell us as best you remember today what you discussed with Detective Novoa when you met him in Brooklyn?

MR. COSTELLO: I object to this, your Honor. Improper redirect.

THE COURT: Overruled.

A The times that I met Detective Novoa in Brooklyn was pertaining to a prior case other than the 100-kilo case.

Q What kind of a case was it, if you remember?

A It was a narcotics case where an arrest was made and Detective Novoa was the arresting officer.

Q What were your discussions with Detective Novoa about?

A It was a deal made with Detective Novoa where the case was supposed to be taken care of in the grand jury.

Q What does that mean, "taken care of in the grand

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MR. GIULIANI: One, your Honor, occurred in October of 1969 and the other in September, I think, of 1970.

THE COURT: All right. Well, I think on the authority I believe I cited I think I have to admit them, Mr. Costello.

MR. COSTELLO: We will see what comes in.

THE COURT: All right.

MR. SCHWARTZ: Your Honor, again I want to call the Court's attention in behalf of the defendant Nieves to the fact that I believe there is presently prejudicial spill-over by the joinder in connection with the indictment. I again ask your Honor to sever the defendant.

THE COURT: The motion is denied.

(In open court.)

MR. GIULIANI: Your Honor, the government calls Sergeant James Sottile.

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JAMES SOTTILE, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GIULIANI:

THE COURT: Members of the jury, it is important to note that as in the case of Lamattina, a witness earlier today, the testimony is offered only against the defendant Novoa and, of course, only as to the counts or charges in the indictment in which the defendant Papadakis and the defendant Nieves are not charged. This is to be considered only as against Mr. Novoa.

All right.

MR. COSTELLO: May we have the witness remove the sunglasses? I don't think it is appropriate to wear them in the courtroom.

THE COURT: No, I won't direct him. I don't know what his eye condition is. I am not an oculist. If he wants to wear thesunglasses, he may.

Q How are you employed, Mr. Sottile?

A I am employed by the Police Department. I am a Sergeant of the Police Department.

THE COURT: Keep your voice up, Sergeant, so everybody can hear you way in the back of the jurybox and

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the back table.

THE WITNESS: Yes, sir.

Q When did you first join the New York City Police Department?

A February 15, 1963.

Q Can you tell us briefly where you have been assigned since you joined the New York City Police Department?

A I did five years on patrol in the Times Square Area and two years in a narcotics field group and three years in the Special Investigations Unit of the Narcotics Division, a year and a half in the Narcotics Division Headquarters, and I am now in the Inspections Division.

Q Can you tell us what years you were in the Special Investigations Unit?

A In June of 1969 until the spring of 1972.

Q Do you know a detective named Joseph Novoa?

A Yes, sir.

Q Do you see him in court?

A Yes, sir.

Q Can you indicate to us where he is seated?

A He is sitting there (indicating).

MR. COSTELLO: Stipulated, your Honor.

THE COURT: Reading from your right to left, where

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is he at the table, the back table?

THE WITNESS: He is to the right of the gentleman who asked me about sunglasses.

THE COURT: All right.

The identification has been made. The record should so show.

Q Do you know a detective namedPeter Daly?

A Yes, sir.

Q And a detective named Carl Aguiluz?

A Yes, sir.

Q Directing your attention to approximately October 22, 1969, did you have occasion on that day to arrest two defendants, one named Mendez and the other named Castillo?

A Yes, sir.

Q Will you tell us where that arrest was made?

A That was made in the Brooklyn Precinct at the residence of Mendez and I assisted in that arrest.

Q Who else was involved in the arrest?

A Detective Fox, Novoa, Aguiluz and myself.

Q At approximately what time of day did the arrest take place?

A It was in the evening during the hours of darkness.

Q What were they arrested for?

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A Possession of a quantity of drugs, in the area of one and a half or two pounds. I don't recall the exact amouunt.

Q Was any money seized from the defendants?

A Yes, sir.

Q Do you know how much money?

A I recall it was an amount between $6000 and $9000.

Q What happened to that money?

A It was split up among the four detectives.

Q Tell us who took the money from the ddefendants, if you know?

A Detective Fox.

Q And after the persons were processed did there come a time when you met with Detectives Novoa and Fox?

A Yes, sir, with Fox, Novoa and Aguiluz.

Q Where did you meet?

A We drove to a location near the Brooklyn Courts near a park, but I am not familiar with Brooklyn. I do not know the exact location except that I recall it was near a park with trees and grass and we were in a car at that location.

Q Who was present in the car?

A Fox, Novoa, Aguiluz and myself.

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THE COURT: When you said that the money was split between the four detectives, were you including yourself in that group of four?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Can you tell us what occurred in the car at this location that you just described to us?

A The money was counted.

Q By whom?

A By Fox and Novoa and I was given a share, Aguiluz got a share and they retained a share.

Q How much money were you given?

A Around $1600 or $1700. I don't remember the exact amount.

Q Did you see how much money the others were given?

A They said it was an equal share.

Q Who said that?

A Fox, Novoa, Aguiluz.

Q Directing your attention to September 11, 1970, did you participate in the arrest of the defendants named Olace and Quintanilla in Manhattan?

A Yes, sir.

Q Who else assisted in that arrest?

A In the physical arrest was Aguiluz and myself.

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Q Did there come a time when you took those two defendants to a precinct?

A Yes, sir.

Q Could you tell us what precinct?

A The 18th.

Q At approximately what time of day were you at the 18th Precinct?

A It was after 12.30 in the morning. Perhaps one or two in the morning when we finally got to the precinct.

Q Did there come a time when Detective Novoa arrived at the precinct?

A Yes, sir.

Q Will you tell us when Detective Novoa arrived what happened?

A Detective Aguiluz told me that he had $7000 which he had taken off Olace or Quintanilla and he told Detective Novoa the same thing and that we were going to divide the money equally between Novoa, Daly, who I don't recall being there, and myself and Aguiluz.

Q And what occurred after that, if you recall?

A Detective Aguiluz gave me a share of that money.

Q How much money did he give you?

A The exact amount was like between $1500 and $1700. I don't remember the exact amount.

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Q Aside from the situation you just mentioned to us, did you on other occasions with detectives other than Detective Novoa take money from defendants and divide it?

A Yes, sir.

Q Approximately how many other occasions?

A Approximately three or four other occasions.

Q And did you participate in installing illegal wiretaps?

A Yes, sir.

Q On how many occasions did you do that?

A Several occasions.

Q Is this the first time Sergeant Sottile, that you are testifying to this information in public?

A Yes, sir.

Q Have you been promised anything in return for your testimony in this case?

A No, no.

MR. COSTELLO: I can't hear him, your Honor.

A In terms of what would happen to me, I have no promise at all, no.

THE COURT: Mr. Reporter, read the full answer. Because of the noise Mr. Costello may not have heard it.

(Answer read.)

MR. GIULIANI: No further questions, your

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Honor.

THE COURT: All right.

MR. GIULIANI: Your Honor, there is some material. Maybe this would be a good opportunity to take a break, your Honor. We have the other situation with the other witness.

THE COURT: All right. Suppose we take our afternoon recess.

Madam Foreman and ladies and gentlemen of the jury, we will take our afternoon recess.

(The jury left the courtroom.)

THE COURT: Mr. Sottile, will you step inside?

(Pause.)

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(In absence of the jury.)

THE COURT: All right, can we put on the record whatever it is about the 3500 material?

MR. GIULIANI: Your Honor, I am trying to find it.

Your Honor, I do not think it is here; it is down in my office. I can run down and get it. It is just a two-page statement to the IRS.

THE COURT: Maybe Mr. Feld can get it.

Are you going to deal with the other matters now?

MR. GIULIANI: I hope so.

THE COURT: All right, why don't you send Mr. Feld down?

MR. SCHWARTZ: Your Honor, may we be excused, if that is okay?

THE COURT: Yes. You may, unless you want to be here.

MR. SCHWARTZ: We will just be outside.

THE COURT: All right.

MR. SCHWARTZ: Thank you.

MR. GIULIANI: Your Honor, I have been informed that Mr. Rooney is here. We are still waiting for his client. He should be here momentarily.

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THE COURT: All right, and when the 3500 material comes back, will you give it to defense counsel?

MR. GIULIANI: Immediately.

THE COURT: All right. Suppose we take a recess.

THE CLERK: The Court will take a short recess.

(Recess.)

(Still in the absence of the jury.)

THE COURT: I guess we will have to postpone this other matter.

MR. FELD: Yes,your Honor. In connection with the 3500 material of Sergeant Sottile, I would like to report that we turned over Government's Exhibit 3518 for identification, which is a memorandum of interview of this witness taken by Internal Revenue Service agents on March 21, 1974.

The witness has testified in the grand jury with relation to cases which are summarized in this memorandum but not in relation to this case, and accordingly we do not regard that grand jury testimony as coming within the purview of Section 3500, and unless the Court -- unless there is an application to that effect, that it be inspected in camera by the Court, we do not propose to turn it over.

MR. COSTELLO: Your Honor, predicated upon what the government has said, I will have to assume that it is definitely 3500 material. If I understood him correctly,

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he said that this witness testified in the grand jury in the instant case and cases that are certainly related, and I think that his suggestion that it should be inspected in camera is a very wise one.

MR. FELD: No, he did not testify in connection wit the matters that he has testified to on the stand. He has testified with relation to other cases.

THE COURT: You mean he has testified as to two prior acts.

MR. FELD: That is correct.

THE COURT: One of them was Mendez and the other was involving --

MR. FELD: Olate.

THE COURT: You are telling me that the Olate and the Mendez transactions were not the subject of his grand jury testimony?

MR.FELD: That is correct.

THE COURT: Well,if you take that out it would not be producible.

Do you want me to just look at it just to be sure that is the case?

MR. COSTELLO: If it is not too much of a strain I would appreciate it.

THE COURT: Well, let us finish with the witness

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and I can take the grand jury testimony after we end today, and if I conclude that it does not relate to the direct testimony of the witness, then that is the end of the matter; and if I conclude that it does and make it available to you and you want the witness back, I will have him brought back.

MR. COSTELLO: Thank you very much.

THE COURT: All right.

MR. COSTELLO: Your Honor, I wonder if I might as a bookkeeping matter, the testimony of the Knapp Commission related to Detective Aguiluz, handed to me by Mr. Giuliani, a complete copy, and certain pages have inadvertently been misplaced yesterday. This copy is now complete, and the defendant Novoa should like to have this entered into evidence.

MR. GIULIANI: Your Honor, we are going to object to the Knapp Commission testimony coming into evidence in this case. I do not see its possible relevance.

MR. COSTELLO: This is the testimony of Aguiluz.

THE COURT: All right, but if the government has no objection I do not have any problems, but I think we ought to do it in the presence of the jury.

RM. COSTELLO: Oh, all right.

MR. GIULIANI: Your Honor, I am sorry, I do not understand your ruling. Are you going to admit it?

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THE COURT: Of course, if it not objected to.

MR. GIULIANI: It is objected to.

THE COURT: You said you did not.

MR. GIULIANI: I said I did.

THE COURT: What is the ground of the objection?

MR. GIULIANI: Your Honor, I do not understand on what grounds just prior testimony of Aguiluz can be admitt some 300 pages of it. He can cross examine him on it. There is no showing that any of it is inconsistent. He has read the portions that he contends are inconsistent. Now he wants to put it all in evidence.

THE COURT: Did Mr. Costello have this testimony during his cross examination complete?

MR. GIULIANI: Yes, your Honor.

THE COURT: Then I am inclined to agree with him, Mr. Costello. I do not see --

MR. COSTELLO: First of all, your Honor, I should like to say this, the allegation that it is over 300 pages, according to the numerical count given to me, is not correct; it starts with page 48 and it runs to page 101. I did not have a complete copy yesterday. Mr. Giuliani being very busy, was only able to run off one copy which he gave to Mr. Schwartz and to Mr. Stone.

During the luncheon hour, Mr. Schwartz and I were

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looking at it. I made certain notes when I tried to cross examine Detective Aguiluz, based on some of the information contained therein, and I found that ten pages were missing.

When I called that to Mr. Giuliani's attention early this morning he very graciously had those ten pages immediately photostated and gave them to me.

THE COURT: Now in those ten pages is there any material, any questions and answers which you think are inconsistent with testimony that Aguiluz gave here?

MR. COSTELLO: Yes, your Honor.

THE COURT: Then I will have to bring him back. Where did he go?

MR. GIULIANI: Your Honor --

THE COURT: I am not going to simply admit a document in evidence, but if counsel did not have this material during his cross examination, and he has it now, and it is 3500 material, and it does relate to his direct testimony, and he says that some of these questions and answers which he has just gotten today are inconsistent with Aguiluz' testimony, I do not see that there is anything else I can do.

MR. GIULIANI: Your Honor, first of all it was made available to counsel.

First of all, it isn't 3500 material; it is a

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public record that was available to all counsel, and the government made it available as a courtesy to defense counsel because we had a copy.

No. 1, a complete copy was delivered. I do not know what happened to the ten pages, but that was given to Mr. Costello this morning before Detective Aguiluz left the witness stand.

No. 3, I wish Mr. Costello -- as I understand it, Detective Aguiluz has gone out of town now -- we could get him back if we have to. I wish Mr. Costello would make some kind of offering or showing as to what particular matters he considers material. It might be just cumulative.

THE COURT: Well, as I understand that, Mr. Costello has just now had these ten pages.

MR. GIULIANI: Not at all, your Honor. It was given to him before Detective Aguiluz left the stand this morning.

THE COURT: Is that so?

MR. COSTELLO: No, your Honor. I spoke to Mr. Giuliani and he said he was going to get those ten pages and would give them to me. I am sure he gave them to me as quickly as he could, but it was not timely enough to cross examine Aguiluz.

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THE COURT: In other words, he did not give them to you until after Aguiluz had been excused?

MR. COSTELLO: Yes.

THE COURT: You know, unless I am going to sit here and determine the question of credibility between counsel which I do not like to do --

MR. FELD: Your Honor, this material is made available to defense counsel on Friday afternoon, and it was available to them on Sunday. Mr. Schwartz picked up his copy on Friday afternoon. Mr.Costello did not. This morning --

THE COURT: But he was missing ten pages.

MR. FELD: No, we gave him a complete copy. There wasn't anything missing. Mr. Schwartz will confirm that.

MR. COSTELLO: That is what I said. When Mr. Schwartz and I were looking at it the copy was complete. When I took some notes on it, while chatting with Mr. Schwartz about the case, when I started to cross examine yesterday afternoon, those ten pages weremissing.

I assumed that somehow or other they became mixed up in the papers.

I looked through my briefcase last night and I couldn't find it. I spoke to Mr. Giuliani this morning

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about 8:30 or 9 o'clock and he told me "Yes, I will have an extra copy run off".

MR. FELD: We gave Mr. Costello this morning --

THE COURT: Well, this will take several hours. Obviously we will have to take testimony on this.

Let us get the jury out of the way.

MR.STONE: Your Honor, I have an offer similar. I do not know whether the government would concede or not but I offer as an exhibit Ramos' grand jury testimony, Exhibit C for identification. I forgot to offer it in evidence. The inconsistencies that I would point out is that Ramos --

MR. GIULIANI: We won't object to that.

THE COURT: Please, the jury has now been gone almost 40 minutes, and I cannot keep them out indefinitely.

MR STONE: I would ask that Ramos be called back, then.

THE COURT: I am not even going to consider that application until we finish now testifying.

Mr. Clerk, will you bring the jury in.

MR. COSTELLO: Your Honor, to move this along we will forget about it.

(Jury in the box.)

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THE COURT: No.

MR. COSTELLO: I respectfully except. That is all.

THE COURT: Mr. Stone.

CROSS EXAMINATION

BY MR. STONE:

Q Did you testify in the Olate case in the Eastern District of New York?

THE COURT: Let me be sure. This witness's testimony was not offered against your client, was it?

MR. STONE: No, your Honor.

MR. FELD: That is correct, your Honor.

THE COURT: If the evidence wasn't offered against your client I don't know that you have any standing to cross-examine.

MR. STONE: Good, I won't cross.

THE COURT: All right. Any redirect?

MR. GIULIANI: No, your Honor.

THE COURT: You may be excused.

MR. SCHWARTZ: I assume that the same admonition holds true for Mr. Nieves?

THE COURT: Surely. I instructed the jury, I believe, before the witness gave any testimony that his testimony was being admitted only as against the defendant

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mccg 1 Stefania-direct

* * * * *

Q Mr. Stefania, prior to or up until March 8 of this year how were you employed?

A I was a member of the New York City Police Department.

Q What was your rank?

A Lieutenant.

Q When did you first become a member of the New York City Police Department?

A In October of 1956.

Q Did there come a time when you became a detective?

A Yes, in the beginning of 1960.

Q Did there come a time when you became a sergeant?

A In October, 1966.

Q Did there come a time when you were assigned to the narcotics division?

A January or February 1968.

Q Did there come a time when you were assigned to SIU?

A The latter part of 1968.

Q Until what time, sir?

A Until December 1971.

Q What happened in December 1971?

A I was promoted to Lieutenant and transferred.

Q During the year 1970 did you function as a sergeant in SIU?

A Yes, I did.

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Q Did you know at that time a detective named Joseph Novoa?

A Yes, I did.

Q Do you see him in court?

A Yes, I do.

Q Would you please tell us where?

A In the red jacket seated at the table between the woman and the attorney on the end.

THE COURT: The record may show the identification has been made.

Q Did he work in SIU at or about that time?

A Yes, that is correct.

Q Did he work in a team?

A Yes.

Q Who were the other detectives in the team?

A Detective Aguiluz and Detective Daly.

Q Directing your attention to March 31, 1970 did there come a time on that day when you received a call from Joseph Novoa?

A Yes, about just prior to 8 a. m.

Q Where were you at the time?

A I was home.

Q Can you tell us what Mr. Novoa said to you and what you said to him at that time?

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A Detective Novoa said he had been on a surveillance with Detective Daly and they had tailed a couple of Latin Americans that they believe to be involved in the major narcotics traffic to the Taft Hotel. He asked me to meet him in the lobby of the Taft Hotel to assist him with the investigation, which I did. I arrived there, I guess, around 9 a. m. and I met -- I don't know if I met Detective Daly or Detective Novoa at the manager's desk.

Q Can you tell us what was said when you met with them at the manager's desk?

A They informed me that they had tailed these two Latins to various locations during the course of the night. They had been on the investigation through the night and the men had taken a room in the Taft Hotel. The detectives had taken a room across the courtyard from the two suspects so that they could look through the window into the room of the two suspects.

Q What do you recall happening after that?

A Well, during the course of the morning there was quite a bit of commotion in the lobby. There were several college students on, I believe it was, Easter vacation and the detectives were taking turns going up to the apartment, up to the room to keep surveillance on the suspects' room and at one point during the morning I was up in the room where I

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observed the room that the suspects were in.

Q Directing your attention to approximately noon through about one p. m., did Detective Novoa receive a phone call?

A Yes, sir.

MR. COSTELLO: Objection to this continuous leading by Mr. Giuliani.

THE COURT: I will permit it.

MR. COSTELLO: This man is a trained police officer.

THE COURT: To ask "Did you receive a phone call?" Doesn't suggest an answer. A leading question is a question that suggests the answer to be yes or to be no. I don't see that that is suggesting. I will permit it.

MR. COSTELLO: May we have an hour fixed of this alleged call?

THE COURT: Of course.

Q Would you tell us the time that you recall this occurred? I think we just fixed the time. Go ahead.

A Shortly after noon.

Q Can you tell us what you overheard?

A Detective Novoa received a phone call and told me after the call "It was Carl and Carl said that there was narcotics in the room. The two suspects are on the way down and to take them."

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Q What do you mean by the phase "to take them"?

A To place them under arrest. He had observed narcotics in the room that they had control over and he was informing us of that so we could make the arrest.

Q What happened next, if you recall?

A Detective Daly, Novoa and I followed the two suspects into the cocktail lounge of the Taft Hotel and placed them under arrest and took them back to the room where we met Detective Aguiluz.

Q What occurred there, if you recall?

A When we entered the room there was a suitcase on the bed. I believe Detective Aguiluz had gotten to the room just prior to us. There was a suitcase on the bed and it had several plastic bags containing white powder later shown to be, I believe it was heroin. Approximately 28 bags.

Q What else occurred, if you recall?

A I notified my office and Lieutenant Egan said he would meet us at the hotel. We then proceeded downstairs with the prisoners, the three detectives and myself. Detective Daly had the narcotics. Detective Aguiluz and Novoa had the prisoners and we went down to the main lobby.

Q What was the narcotics in? I'm sorry.

A It was in a large suitcase.

Q Who had possession of that?

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A Detective Daly.

Q What occurred when you got downstairs in the lobby?

A When we got to the lobby either Detective Aguiluz or Novoa took either one or both of the defendants -- I don't recall -- to the manager to pay their bill before we took them to the station house.

In the course of conversation both Aguiluz and Novoa spoke to the defendants in Spanish and then either one or both informed me that there was a large sum of money in another room upstairs and the gist of the conversation was that we could take the money without vouchering all of it.

Q Can you tell us where Detective Daly was, if you know?

A Detective Daly had taken the narcotics and was sitting in a car in front of the hotel.

Q What occurred next?

A Lieutenant John Egan arrived with Patrolman Wooster who was a clerical. They entered the hotel and Wooster said something about Daly sitting alone in the car with all the narcotics and he felt it wasn't a good idea and he went out and accompanied him. He might have taken one of the prisoners. I don't recall whether or not he did. In any event, when Lieutenant Egan came there I mentioned to him the fact that Novoa and Aguiluz told me there was a large amount of money

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upstairs and we could take it without vouchering all of it.

THE COURT: What does that mean, "without vouchering all of it"?

THE WITNESS: Your Honor, seizing the money without turning it in to the police department property clerk.

THE COURT: By vouchering you give it to the property clerk and get a voucher or a receipt for it?

THE WITNESS: Yes.

THE COURT: I'm sorry. I interrupted.

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Q Any further conversation at that point?

A There was a conversation. I don't recall all of it.

Q What happened next?

A I went to the elevator with Lieutenant Egan and I believe both Novoa and Aguiluz. That is when I think Wooster might have been watching the prisoners in the car with Daly or maybe one of them came along. I really don't recall. We went up to another floor, went into a hallway and there was either Novoa or Aguiluz had a conversation with a party in the room.

Q Where were you?

A I was in the hallway with Lieutenant Egan.

Q Where was Detective Novoa?

A He was either in the room or on the threshhold of the room with Detective Aguiluz.

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Q Tell us what you observed?

A After a conversation with a party in the room Detective Novoa came out with a black woman's traveling bag about so big (indicating), and I don't know if anyone said it, but it contained the money. I don't know if they said "this is the money," or words to that effect or if I just seemed it. In any event, we got back in the elevator and proceeded down to the main lobby and we then went to the 18th Precinct station house.

Q What happened there?

A When we got to the station house we took the prisoners upstairs to be processed and I believe Detective Novoa had put the black suitcase in a car. I don't know whose car, but it wasn't at the station house. The prisoners were processed. It took a couple of hours. They were then brought down to the criminal court and Lieutenant Egan, Novoa and myself waited in the vicinity of the criminal court while Daly and Aguiluz were arraigning the prisoners.

Q When you say the criminal court, where is that located?

A 100 Centre Street, just down the block.

Q Tell us what else occurred?

A By this time it was evening and I guess, I don't know, 9 p. m., shortly before or after that Detective Novoa

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suggested that we go to the Holiday Inn Motel on 57th Street, West 57th Street and split up the money.

Q To whom did he say that?

A Myself and Lieutenant Egan. I'm not sure if Detective Aguiluz accompanied us. I'm not positive. I don't think Daly did. I think Daly remained for the arraignment. I'm not sure if Aguiluz came along or not. In any event, we went to the motel on 57th Street.

Q And what happened outside the motel?

A Detective Novoa went in, arranged for a room and came out. Then he went back in with Lieutenant Egan and myself and this time he retrieved that suitcase with the money.

Q Do you know where the took it from, where it was?

A In the car. It might have been in the car while he was in there. It was in the trunk.

THE COURT: That was that same black lady's bag?

THE WITNESS: Yes, sir. We went to the room in the otel and we sat on the bed, Lieutenant Egan, Novoa and myself and, again, Aguiluz may have been there. I'm not sure.

Q What occurred when you got inside the room?

A Novoa opened the bag, dumped the money on the bed and there was several packages of money and he suggested that we count it out.

Q Do you recall what he said?

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A He said he had experience in a bank and in counting money the best thing to do would be to make several even piles each containing the same amount of money, which he did. We arrived at a figure of close to $40,000. It was then split up into five separate piles. I took a pile, Lieutenant Egan took a pile, Novoa took a pile for himself and Daly and possibly Aguiluz, if Aguiluz wasn't there. There was an odd amount left and Lieutenant Egan said that with the odd few hundred dollars, he wanted to give it to Charlie Wooster, the clerical man because he had done a lot of running around that day.

Q What did you do after you took your share?

A I left and I went home.

Q Directing your attention to April 15, 1970, did there come a time on that day when you received a call from Novoa?

A Yes.

Q Will you tell us approximately what time you recall receiving that call?

A I received that call again early in the morning sometime before 8 a. m., because I was still home and my children had not gone to school.

Q What did you say to Novoa and what did he say to you?

A Novoa told me again they had been on an investigation

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all night with Detective Aguiluz and Detective Daly and they arrested four persons for possession of about 100 pounds of narcotics, heroin and cocaine. He then told me -- he gave me an address on 19th Street West and asked me to meet him there. I left the house. It took me about an hour. I got there I would say in the vicinity of 9 a. m. When I got there Lieutenant Egan had been notified. He was on the scene with Detective Novoa. There was another detective there, from another unit and Detective Daly, I think, had gone out to get coffee, a few containers of coffee. When we went into the room, I believe -- I don't recall -- I think it was on the first floor. We went into the room and in the living room piled on the floor was several packages. Later, after weighing them, they weighed between either one pound or one kilo and it had heroin or cocaine in the packages.

Q When you say "several packages," can you recall approximately how many packages were on the floor of the living room?

A Well, in the vicinity of a hundred because upon weighing them some were a half kilo and some were kilo packages and the total weight was 100 kilos.

Q What else do you recall happening while you were at that apartment?

A Well, I looked around the apartment. Lieutenant

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Egan told me that he had notified the main office. And I saw the closet where the narcotics had been discovered. There was a short delay and then several superior officers from the narcotics division came, reporters.

Q Did there come a time when you went to the precinct?

A Yes. After the reporters left and all the supervisors left we went to the 6th Precinct.

Q Prior to the time that you left the apartment did Detective Aguiluz ever join your group?

A I don't recall. I don't know if I saw him at the apartment or if I saw him later at the station.

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Q Well, I show you what is in evidence as Government Exhibit 3 and ask you whether that is a picture taken of that apartment with the narcotics you just testified to (handing).

A Yes.

Q And is Detective Aguiluz in that picture?

A Yes.

Q Did you at any time, as far as you recall, ever receive any money with regard to that arrest?

A No.

Q From Detective Novoa or anyone else?

A No, to the best of my recollection I never received any money from that arrest.

Q Now directing your attention to May 11, 1970, did there come a time on that day when you received a call -- a telephone call from Detective Daly?

A Yes.

Q Do you remember the approximate time?

A That was around 9 p.m. in the evening.

Q Can you tell us what Daly said to you and what you said to him?

A Daly told me -- he had been on an investigation with his team, Novoa and Aguiluz, and they had been observing some Latin drug dealers -- men they believed to be

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drug dealers, and the grop had split up, and Daly had trailed three men to JFK Airport where they were about to depart on a plane.

During the course of the evening he ascertained that these men left their hotel without paying their bill, and on the ruse to keep them in the country until the investigation was completed, he arrested them for theft, failure to pay the hotel bill, and he asked me to meet him at the airport, which I did.

Q And did there come a time when you took these defendants back to New York City?

A Yes.

Q And prior to going back to New York City did you find out if any money was seized, taken from the defendants?

A When I got to the airport Daly had a black pouch. He said it contained a large amount of money, and he hadn't counted it yet, and he suggested we count it when we get to the station house. They were going to be booked at the 18th Precinct in Manhattan.

Q Did you eventually arrive at the 18th Precinct?

A Yes.

Q And who was present at the 18th Precinct?

A I went to the 18th Precinct with Detective Daly,

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and after we arrived Lieutenant Egan, Aguiluz and Novoa -- I believe Aguiluz and Egan were there -- I recall seeing them there. Detective Novoa was there for a while -- he came upstairs to the room where we were processing the prisoners.

Q Did you ever have any discussions as to how much money was seized, as far as you recall?

A Well, I never found out the total amount on the seizure until just recently, but it was decided by somebody in the team -- I don't know who made the decision -- that $2900 would be vouchered and the rest of the money was going to be split up. It was agreedto generally by all.

Q Were you a party to any discussion that led up to that decision?

A No, not as far as amounts, no.

Q Were you told about it? Were you told about it at the time?

A Yes.

Q Who told you?

A Detective Novoa.

Q Did there come a time when you were handed some money?

A Yes.

Q Can you tell us the circumstances surrounding

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that -- first, where did that occur?

A On the second floor of the 18th Precinct in the men's room. Detective Novoa handed me a number of bills, and when he gave them to me he indicated this was my share.

Q What did he say to you?

A He asked me if I wanted to count them and I said "No, it's all right."

Q Did you subsequently count it?

A I believe the next day I counted it, yes.

Q And how much money was there?

A It was 10 or $12,000.

MR. GIULIANI: Your Honor, I think those are the only questions I have for now.

THE COURT: All right, suppose I excuse the jury now until tomorrow morning and we can deal with a number of questions in the absence of the jury.

Now, members of the jury, I will have to remind you that, as I think I told you yesterday, we will resume tomorrow morning at 11 o'clock. I am obliged to do something uptown, so we cannot start until 11 o'clock.

So if you will be here at 11 o'clock we will resume the trial at that time. And of course keep in mind my admonition not to discuss the case amongst yourselves or with anybody else, or to see, read or hear anything about

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Supreme Court of the United States in Russell v. The United States and our Circuit Court of Appeals in Cuomo and Rizzo have stated emphatically that some day a situation might arise in which the conduct of law-enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.

I say to your Honor that that day has come in this case. Coupled with the principles contained in the very recent slip opinion in U.S. v. Toscanino in which the Circuit condemned on the part of society underlying law-enforcement illegality in the form of kidnapping to obtain jurisdiction, in spite of the fact that this is contrary to the long-standing principles of Kerr v. Illinois.

I am reminded and call the Court's attention to the language of this Circuit in United States v. Mele:

"The government wins its cases whenever justice is done to its citizens in its courts."

I ask the government to join me in moving your Honor to dismiss this indictment against (Joaquin Nieves blocking the evidence) and I say to your Honor that justice will be served by this and the government will have won its case.

MR. GIULIANI: Of course the government is

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THE COURT: I am disappointed that we seem to be missing jurors. We will just have to wait until the jurors arrive.

(Pause.)

(Jury present at 11.15 a.m.)

THE COURT: All right, Mr. Clerk, would you get Mr. Stefania, please.

G A B R I E L S T E F A N I A, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. GIULIANI:

THE CLERK: Mr. Stefania, you are still under oath.

Q Mr. Stefania, in addition to the violations of law you admitted to yesterday have there been other situations in which you as a police officer took money?

A Yes, sir.

Q Can you tell us approximately how often?

A Well, I believe we related two instances yesterday and there were about four other occasions, approximately four.

Q I'm sorry?

A About four, three, four or five.

Q Did that involve the sharing of money with other detectives in SIU?

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A Yes, sir.

Q Other than the defendant on trial, Aguiluz or Daly?

A Yes, sir.

Q Have you been involved in the installation and maintenance of illegal wiretaps?

A No, sir.

Q Have you ever committed perjury?

A No, sir.

Q Did there come a time when you were indicted in this United States District Court?

A Yes, sir.

Q Was that on March 4, 1974?

A Yes, sir.

Q What were you indicted for?

A I was indicted for conspiracy to defraud the United States Government for -- accessory after the fact on a narcotics conspiracy, and there was another count, I believe, obstructing justice.

Q Can you tell us what that indictment involved?

A That involved the situation that I related relative to the Taft Hotel, the arrest and the keeping of the $7000 to $8000.

Q Since that time have you been represented by an

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attorney?

A Yes, sir.

Q Did there come a time when you decided to cooperate with the government?

A Yes, sir.

Q Did you this morning plead guilty?

A Yes, sir.

Q Before Judge Wyatt?

A Yes, sir.

Q Can you tell us what you pleaded guilty to?

A Income tax evasion.

Q In what situation?

A Relative to the Taft Hotel incident.

Q Will you be sentenced?

A Yes, sir.

Q Do you remember the date of sentence?

A June 28.

Q In return for the cooperation that you have given to the United States, what have you been told will be done to you?

A At the time of sentencing, my cooperation will be known to the judge presiding at the sentencing and the United States Attorney's office had agreed to intercede with the Department to allow me to get my vested interest

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pension.

Q Can you tell us what the penalties are for the crime for which you pleaded guilty?

A Five years in jail, $10,000 fine or both.

Q Have any promises been made to you of any kind as to what kind of a sentence you will receive?

A No, sir.

MR. GIULIANI: No more questions.

THE COURT: All right, Mr. Costello.

CROSS EXAMINATION

BY MR. COSTELLO:

Q Tell the ladies and gentlemen of the jury about the Solomon case, Officer.

A You want me to tell them now?

Q Yes.

A Yes, sir.

Q Keep your voice up. You may look any place you want but why don't you look at the jury?

THE COURT: I have told you before, Mr. Costello, if you want the witness instructed in this courtroom as to demeanor and behavior, make an application to me and I will consider it.

MR. COSTELLO: Would your Honor consider an application to ask this witness to look at the jury when

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ALBERT W. SEELEY, called as a witness in behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Mr. Seeley, how are you employed?

A I am a special agent with the U.S. Customs Service.

Q What is your present responsibility?

A Branch Chief in the office of investigations at headquarters.

Q During the period of late 1969 and 1970 were you also a special agent with the Customs Service?

A Yes, sir.

Q Directing your attention to December 1969 did you commence an investigation concerning the importation of narcotics by South Americans into the United States?

A Yes, sir.

Q What was the name that was given to this investigation?

A The South American Smuggling Group.

Q Will you tell us when that investigation commenced?

A About December 7, 1969.

Q What caused you to initiate this investigation?

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A I learned through the news media of four South Americans arrested by the New York City Police Department in New York.

MR. SCHWARTZ: Excuse me. I don't mean to interrupt. I am going to ask your Honor again to give the jury the same instructions with regard to this witness' testimony.

THE COURT: I certainly will, if Mr. Feld would enlighten me.

MR. FELD: Yes, this is offered against the defendant Novoa only.

THE COURT: All right, thank you, Mr. Schwartz and Mr. Feld.

Members of the jury, you have heard that Mr. Seeley's testimony is offered only against the defendant Novoa. As I have emphasized before, that being the case, the testimony is not to be considered in connection with Nieves and Papadakis.

Q Where did that arrest occur?

A At the McAlpin Hotel in New York.

Q Can you tell us what you did after you received this information?

A On Sunday, December 7, 1969 I went to 100 Centre Street in New York City where the four defendants were to

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be arraigned.

Q Whom did you see there?

A I spoke with two New York City detectives.

Q Do you remember their names?

A Mr. Joseph Nunziata and Mr. Raymond Viera.

Q Did you receive certain information from them?

A Yes.

Q Concerning that arrest?

A I did.

Q Will you tell us that information?

A One of the defendants, Mersais Lopez, had arrived through the JFK Airport on December 6, 1969, a couple of hours preceding the arrest by the Police Department, and he had in his possession when arrested two wine jugs containing a quantity of narcotics.

Q Directing your attention to December 8, 1969, could you tell us what happened on that date?

A Two of my fellow agents covered the same flights arriving from South America and intercepted a courier by the name of Arenia Arraya Murchio.

MR. SCHWARTZ: May I just ask the Court for a side bar conference?

THE COURT: All right.

(At the side bar.)

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MR. SCHWARTZ: While the government has conceded, your Honor, that it is not offering this evidence as to the defendant Nieves and as to the defendant Papadakis, I do say, your Honor, that I have grave reservations while listening to it as to its relevance as to the entire matter and, your Honor, the evidence that is coming in here, I must respectfully urge, has the severest prejudicial effect upon both Papadakis and Nieves and I say to your Honor at this point I must again renew my motion for a severance and I ask your Honor to strike this testimony from the record.

THE COURT: That motion will be denied.

Mr. Feld, what has this got to do with the case at bar?

MR.FELD: Under Count 1, the count which charges the conspiracy to obstruct justice, a number of investigations were being conducted by the Bureau of Customs, the Immigration & Naturalization Service and the Department of Justice.

THE COURT: He has not said anything about any defendant on trial here.

MR. FELD: I am going to connect that up. I have to establish that an investigation was pending concerning the South American operation.

THE COURT: Do we need all these details as to the

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arrivals of people not connected with this case at the airport?

MR. FELD: The offer of proof will be that this courier was represented by Mr. Santangelo. Mr. Santangelo is a co-conspirator in this case. Mr. Santangelo then represented the defendants. It is going to be connected.

MR. COSTELLO: May I, your Honor, for the record indicate the defendant Novoa's most vigorous protest against the admission of this testimony as being highly prejudicial and inflammatory. Admittedly Detective Novoa was not connected with the McAlpin case in any way. It was a matter involving Detective Nunziata and I think McClellan and in fact I am not su - that Novoa was assigned to that level of narcotics investigation actually on that date, and I request you to charge the jury at this time that his testimony relating to the McAlpin is in no way connected with the defendant Novoa.

THE COURT: We will have to wait and see what the connection is.

(In open court.)

MR.FELD: May the reporter read the last question and answer, your Honor?

THE COURT: Yes.

(Record read.)

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Q And he was placed under arrest?

A He was, yes.

Q Excuse me?

A Yes.

Q What did he have in his possession?

A He had two wine jugs containing about six kilos of heroin.

Q Now, did there come a time when he was arraigned in the United States Court for the Eastern District of New York?

A Yes.

Q That was when?

A The same day about 3 o'clock in the afternoon.

Q Who was his attorney?

A Mr. Michael Santangelo.

Q Did you subsequently learn that Mr. Santangelo represented the defendants who were arrested at the McAlpin Hotel?

A Yes, sir.

Q Did your investigation continue during the winter and into March and April?

A It continued in through the spring, yes.

Q Could you tell us, did Mr. Araya eventually plead guilty on April 10, 1970 in district court?

A Yes, he did.

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Q At that time he was represented by Mr. Santangelo?

A Yes, sir.

Q And he was sentenced at that time; is that correct?

A Yes, sir.

MR. COSTELLO: I have already voiced my opinion that this is not in any way connected with the defendant Novoa for the record. I must continue and object to leading and testifying by Mr. Feld for the witness.

THE COURT: All right, go ahead.

Q Mr. Seeley, directing your attention to April 16, 1970 did you have occasion to gain some information on that date concerning this investigation?

A Yes, sir.

Q Would you tell us what that was?

A I learned through the news media there was four persons arrested in Manhattan by the New York City police.

Q Was anything seized?

A Yes, a large quantity of narcotics.

Q As a result of receiving that information, what did you do?

A I requested two agents to obtain information concerning the identities and the backgrounds surrounding the arrest.

Q Who were the people who were arrested?

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A Emilio Diaz Gonzalez alias Alfredo Picada; Elena Deriso, alias Yolanda Sariemento; Jorge Aparicio, Jorge Rodriguez Arraya, alias Juan Redondo.

Q And the investigation that you initiated on these defendants involved their travels internationally and domestically; is that correct?

A Yes, sir.

Q Were you advised by the Police Department that in the possession of these defendants were certain passports?

A I obtained a copy of the passports that had been seized at the time of their arrest.

Q Was one of those passports in the name of Waldo Diaz?

A Yes.

Q Did that have anything to do with the arrest of December, the earlier arrest.

A Not at that time.

Q Did you subsequently learn that?

A Subsequently, six months thereafter I learned that it was connected, yes.

Q What was that connection?

A That there was a connection with Arsenia Arraya Murchio.

Q What was that connection?

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A They were associates in the same organization.

THE COURT: Did you get the passports of those four people that you mentioned?

THE WITNESS: No, sir. I obtained copies.

THE COURT: Do you have copies?

THE WITNESS: Yes.

THE COURT: What passports were they? I mean, what countries issued the passports?

THE WITNESS: Diaz' passport in the name of Picada, I believe, was a Uruguayan passport. There was no passport for Deriso, just an identification card.

THE COURT: What country issued it?

THE WITNESS: I'm not certain. I am not certain. It was a foreign, a South American country.

THE COURT: All right, it was a South American country. What about the other two?

THE WITNESS: The other one on Jorge Rodriguez, I believe, was a Chilean passport, and the other passport, and the other passport for Aparicio, I believe was a Spanish passport.

THE COURT: All right.

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BY MR. FIELD:

Q How did you receive -- who was the attorney who represented the defendants?

A One of the attorneys that represented some of the defendants -- specifically Diaz -- was Michael Santangelo.

Q Did you obtain information which indicated that Diaz and Deriso had used false information to enter the United States?

A Yes, I did.

Q And did you then contact federalagents?

MR. COSTELLO: May we have a time and date on that, your Honor?

THE COURT: Yes; you mean when he learned it?

MR. COSTELLO: Yes.

THE COURT: All right.

When did you learn that some of them had entered the country under false names?

THE WITNESS: It was several days after the arrest in April of 1970.

THE COURT: In April 1970, several days after April 15th.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q And did you contact the Immigration & Naturalization

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Service?

A Yes, sir.

MR. COSTELLO: Your Honor, I must object to this continual leading. He is testifying for the witness. All this man is doing is parroting "yes" or "no" answers.

THE COURT: Overruled.

Q Whom did you contact?

A Investigator Earl Swift.

Q And what information did you receive from Mr. Swift?

A That Mr. Swift had a Immigration file record on Elena Deriso.

Q And did you get certain information from the New York City police regarding these individuals?

A Pardon me?

Q Did you get any information from the New York City police regarding these four individuals?

A The initial documents, passports, copies of the passports.

Q And do you remember the name of the person who gave that to you?

A The arrangements was made with Mr. Carl Aguiluz.

Q Now directing your attention to the period of late April or May of 1970, did you have occasion to go to

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the New York County District Attorney's office in connection with this case?

A Yes.

Q And can you tell us what happened then?

A I went to Mr. Fitzgerald's office in Manhattan to discuss with him the police arrest and the Customs and the Immigration investigations that we were conducting.

My concern was that the defendants did not get out on bail before we could establish their identities.

Q And was anybody else present --

MR. COSTELLO: May we have the time and date on this, your Honor?

THE COURT: Yes.

MR. COSTELLO: I am talking about Mr. Fitzgerlad.

THE COURT: Yes.

Q When was that?

A That was in the latter part of April, prior to May 14th.

Q And who was present besides yourself and Mr. Fitzgerald?

A Mr. Carl Aguiluz and Mr. Novo.

Q Novoa?

A Novoa.

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Q Now directing your attention to May 15, 1970, what happened on that date?

A I received an arrest warrant from the Miami Office on Emilio Diaz Gonzalez and Elena Deriso for --

Q What did you do with that?

A I filed the arrest warrant in New York City Tombs against Emilio Diaz and the arrest warrant could not be filed against Elena Deriso.

Q And do you know why that was?

A Yes.

She had obtained release on bail the Friday before, which I believe was somewheres around the 10th of May.

Q And how much bail was that?

A $100,000 bail.

Q And do you know what happened to her thereafter?

A She fled -- fled the U.S. back to South America.

Q Now directing your attention to May 19, 1970 will you tell us what happened on that date?

A I was notified that Mr. Emilio Diaz Gonzalez was being released from the Tombs prison, and I appeared to place him under arrest against the Customs violation from the Miami office.

Q And what did you do?

A I processed him, and I believe the following day

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I took him down to the Southern District in New York for arraignment.

Q And was bail fixed there?

A Yes, bail was fixed at $50,000.

Q And was an indictment subsequently filed in the Southern District of New York?

A An Immigration indictment was subsequently filed.

Q Against Diaz Gonzaelz?

A Yes.

Q Charging him with violation of the laws relating to immigration?

A Yes, sir.

Q Now did there come a time that you filed a charge against him in the Eastern District of New York?

A Yes, sir.

Q When was that?

A On or about May 22nd, 1970.

Q Did there come a time when you wer present in the office of Mr. William Tendy at that time?

A Yes.

Q And who else was present?

A Mr. Fitzgerald from the District Attorney's office

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in Manhattan -- I beg your pardon, it was the defendant's attorney.

Q Mr. Santangelo.

A Mr. Santangelo.

Q And Mr. Tendy was the Chief of the Narcotics Unit in the U.S. Attorney's Office in Southern District of New York, is that correct?

A That is correct.

Q Now could you tell us what happened during that meeting in Mr. Tendy's office?

A Mr. Santangelo was complaining about the charges being placed against his defendant by the government, and he inferred that his defendant Diaz had been arrested illegally, and that his defendant Diaz could identify the location in Jersey where he had been arrested.

Q What if anything did Mr. Tendy say?

A Mr. Tendy asked Mr. Santangelo if his defendant was willing to go with the agent to point the location out, and Mr. Santangelo said yes, provided he could accompany his defendant.

Q And did you go?

A I took him in a car with another agent, both Mr. Diaz and Mr. Santangelo.

Q Will you tell us where you went?

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A I went uptown to the George Washington Bridge. I drove across the George Washington Bridge, and when I got on the Jersey side Mr. Diaz pointed out a location of a motel which was named the Toll Gate Motel in Fort Lee, New Jersey.

Q And what happened when all of you arrived at the Toll Gate Motel?

A I drove up to the motel and I went in to speak to the owner-operator, to inquire about an incident that may have happened several weeks ago involving a potential arrest of South Americans, and indicated the time during the late evening, and I was instructed by the gentleman that I would have to come back at 6 o'clock and speak with his night man, who would be the person who would be aware of any happenings.

Q After you spoke with this person -- not the night manager -- you went back to your car, did you not?

A I proceeded back to the car and I arrived at the car with Mr. Santangelo when a chambermaid walked across the courtyard of the motel, in the course of which Mr. Santangelo walked after the chambermaid, stopped and spoke with her for a minute or two.

At that point the owner that I had previously conversed with indicated his annoyance with Mr. Santangelo

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about stopping his employee and speaking to her without his permission.

He went back -- the manager-owner went back into the motel, and about five or ten minutes later two detectives arrived on the scene from the Fort Lee Police Department to challenge my presence there.

I identified myself as a federal officer and the purpose of my visit, and the inquiry I was making, and they responded telling me that there had been an incident with a report submitted to the Chief fo Police in the Fort Lee Police Department.

I then got in the car together with Mr. Diaz, my fellow agent, Mr. Santangelo and I drove back to the Southern District of New York and advised Mr. Tendy of what had transpired, including Mr. Diaz' identification of the motel.

Q Now did you make another trip to Fort Lee?

A On May 25th I went back to the Fort Lee Police Department and made inquiry with a Sergeant Mc Guire concerning a report submitted on an incident at the Toll Gate Motel, and he furnished me with a copy of a report submitted by one of their policemen.

Q Now tell us what happened on May 28th.

A On May 28, 1970 I executed an arrest warrant

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against Jorge Rodriguez for false documents and entering the U.S.

Q And he was brought to what court?

A He was brought to the Eastern District of New York in Brooklyn.

Q And did Mr. Diaz eventually agree to cooperate?

A Mr. Rodriguez.

Q Mr. Rodriguez, I mean.

A Mr. Rodriguez eventually cooperated.

Q Now your investigation continued thereafter, did it not?

A Yes, sir.

Q And did there come a time when an indictment was filed in the Eastern District of New York involving -- charging a number of persons with conspiracy relating to this importation involving wine bottles and wine glasses?

A Yes.

Q When was that indictment filed?

A An indictment was returned in the Eastern District on January the 7, 1971 against six defendants.

Q And were any of those persons the persons that you have referred to already -- or who were those persons?

A One of the defendants was Emilio Diaz Gonzalez; Elena Dariso Sariemento; Waldo Diaz; a defendant named

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Pedro Rivera, I think, and one other defendant, I forget the name.

Q Thank you.

Now directing your attention to June, 1970 was there a joint investigation initiated in connection with this matter by the Bureau of Customs and the Bureau of Narcotics and Dangerous Drugs?

A Yes. We had been working jointly together on the same smuggling organization.

Q And do you recall the name of this joint operation?

A Well, the Bureau of Narcotics and Dangerous Drugs referred to it as the Condor Operation.

THE COURT: We will have to stop now for lunch.

Madam Foreman and ladies and gentlemen of the jury, suppose we take our luncheon recess now, and we will will to take a few minutes longer than usual. Be back at 10 minutes past two. I think we will be able to start then.

Thank you, you may retire.

THE CLERK: The jury is excused until ten after two.

(Jury left the courtroom.)

THE COURT: All right, gentlemen, we will resume at ten minutes past two.

(Luncheon recess.)

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A F T E R N O O N S E S S I O N

2.15 P.M.

MR. COSTELLO: Your Honor, I have an application, if I may.

THE COURT: Yes.

MR. COSTELLO: During the luncheon recess, your Honor, I was informed that Mr. Stefania while testifying in the Eastern District had indicated that as part of the arrangement made with the government he was not only to receive a pension but that he was to act as a United States Government agent, as I understand it, for a period of two or three years and that he had entered into a written contract to that effect. I have no idea as to whether or not this is true, but I am asking the government if there is in fact a contract of employment with Mr. Stefania.

MR. GIULIANI: There is no contract of employment with Mr. Stefania, your Honor, to my knowledge.

THE COURT: All right, bring the jury in, Mr. Clerk.

MR. SCHWARTZ: Can we take a brief application at the side bar while the jury is coming in?

THE COURT: Can't it wait until we finish with this witness?

MR. SCHWARTZ: Fine, your Honor. It does relate

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to testimony coming out of this witness, but we can wait.

(Jury present.)

ALBERT W. SEELEY, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. FELD:

Q Mr. Seeley, did there come a time when you learned that there was a connection between a man named Arraya, who had been arrested on December 8, 1970, and Elena Deriso, also known as Yolanda Sariemento?

A Yes.

Q What was that connection?

A The connection was a Chilean passport found in the residence where the narcotic seizure was made in New York.

Q Did he agree to cooperate with you?

A Yes, he did.

Q Did he furnish you with information as to his relationship with her?

A Yes, he did.

Q What was the nature of that information?

A One of a close confidant and at one time he served as a cook in her house.

THE COURT: Would you read back the last question and answer?

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(Record read.)

THE COURT: This is the relationship between what persons?

THE WITNESS: This is Elena Deriso, alias Yolanda Sariemento.

THE COURT: Yes.

THE WITNESS: And the Customs defendant, Arsenia Arraya Murchio.

THE COURT: And you learned that he had been her confidant and a cook in her house?

THE WITNESS: A better term would be houseboy.

THE COURT: He had been her houseboy and confidante; is that it?

THE WITNESS: Well, I would say houseboy.

THE COURT: And not confidant?

THE WITNESS: No, not confidant. Houseboy and cook.

THE COURT: All right. I didn't understand you.

Q Was he in any way connected with her narcotics activities?

A Yes.

Q What connection did he serve?

A He acted to bring the narcotics that were seized by Customs on December 8, 1969.

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Q Was that destined for her?

A Yes, it was.

Q Did you later learn that she was present at the airport at the time he was arrested?

A That is correct.

Q What was that indication?

A A check of the Customs records showed she arrived on a different airplane about the same time at the JFK Airport at the time he had been apprehended by Customs.

MR. COSTELLO: Time and date of this information, your Honor.

THE COURT: Yes.

Q When did that occur?

THE COURT: When did you learn that?

MR. COSTELLO: In relation to the arrest, your Honor.

A That was subsequently, in the late of 1970 after the defendant Arraya and Jorge Rodriguez had been cooperating with the government.

Q In April and May of 1970 did you know that Elena Deriso had an appointment on Brooklyn, New York?

A No.

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Q Did you find that out later on?

A Yes.

MR. COSTELLO: I object to his testifying for the witness; outrageous.

THE COURT: How would you answer that question? In other words, as I say, a leading question is a question which suggests the answer. He asked him, "Did you find that out later on?" He can answer either "Yes" or "No."

MR. COSTELLO: May we have the last two Q's and A's?

THE REPORTER: I am sorry, the other reporter just left with it.

MR. COSTELLO: All right.

THE COURT: I agree, Mr. Costello, leading questions are certainly generally to be avoided, but sometimes it is not too evident as to what is a leading question.

MR. COSTELLO: Well, I most respectfully think it is.

THE COURT: All right, let us go on.

BY MR. FELD:

Q In April or May of 1970 did you know that Peter Daly had seized $5000 from the apartment of Elena Deriso in Brooklyn, New York?

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A No, sir.

Q Were you advised by anybody in the New York City Police Department that $1200 had been seized from the four defendants who were arrested on April 15th?

A No, sir.

Q Were you advised that 5 kilograms of narcotics had been retained from the seizure at the apartment on West 19th Street?

A No, sir.

Q Was that information -- withdrawn.

MR. FELD: I have no further questions of the witness, your Honor.

THE COURT: All right.

MR. COSTELLO: Your Honor, I renew my request that you direct the jury to disregard his testimony. There has been no connection with Detective Novoa.

THE COURT: Denied.

CROSS EXAMINATION

BY MR. COSTELLO:

Q Mr. Seeley, is it?

A Yes, sir.

Q Is that your name, sir?

A Yes, sir.

Q Mr. Seeley, you have told the ladies and

* * * * *

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THE COURT: All right, Mr. Clerk, bring in the jury.

(Jury present.)

M I C H A E L Y A R C H A K, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Dr. Yarchak, how are you employed?

A I am employed as a chemist with the New York City Police Department.

Q What are your duties there?

A I analyze for the presence of narcotics and other controlled substances.

Q Will you tell us your formal education in the field of chemistry?

MR. STONE: We will stipulate to his expertise.

MR. COSTELLO: Yes, your Honor.

MR. SCHWARTZ: Yes.

THE COURT: All right. It is stipulated that the witness is expert in the field of chemistry.

Q Directing your attention to December, 1972, did you have occasion to conduct a reanalysis on a quantity of narcotics which were in the New York City Property Clerk's

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office?

A Yes, I did.

Q And what was referenced to the police laboratory No. 16345 of the year 1970; is that correct?

A Yes, sir.

Q And that involved 100 kilos of alleged narcotics?

A Approximately, yes, sir.

Q What did your analysis show?

A My analysis showed that there was no controlled substance present in the evidence that I examined.

THE COURT: You mean there was no heroin or cocaine?

THE WITNESS: That is correct.

Q They were plastic bags; is that correct?

A Yes.

Q And they contained a powder?

A Yes.

Q And what was the nature of the powder?

A I don't know.

Q Did you make your report?

A Yes, I did.

MR. FELD: Let me mark this as a government exhibit for identification.

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(Government's Exhibit 11 marked for identification.)

Q Let me show you Government's Exhibit 11 for identification. I will ask you whether that is a copy of your report in reference to that reanalysis?

A Yes, it is.

Q And I refer you to paragraph 7.

A Yes.

Q What did you find the bags contained?

A The bags contained a starch substance probably flour.

MR. FELD: We will offer Government's Exhibit 11 in evidence.

MR. STONE: Certainly we want the exhibit in evidence.

MR. SCHWARTZ: We join in the offer.

THE COURT: Show it to Mr. Costello.

MR. COSTELLO: Defendant Novoa joins in the offer, your Honor.

THE COURT: All right, then, the document will be admitted without objection.

(Government's Exhibit 11 received in evidence.)

Q Dr. Yarchak, can you tell us, if you know, what

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caused this reanalysis to be conducted?

A I'm sorry?

Q Do you know why the reanalysis was requested with respect to these substances?

MR. STONE: Objection.

THE COURT: No, I will permit it.

A I believe that a certain amount of material had been suspected to be -- had been removed from the Property Clerk's custody and they wanted to have the particular case reanalyzed to determine if the original heroin and cocaine was still present in this case.

MR. FELD: Thank you. No further questions.

MR. COSTELLO: Your Honor, my colleague, Mr. Stone, has a very important appointment and with the permission of the Court I will let him cross first.

THE COURT: All right.

CROSS EXAMINATION

BY MR. STONE:

Q Mr. Yarchak, are you a police officer?

A No, sir.

Q You work for the Police Property Clerk's Office?

A No, sir.

Q You work for your own laboratory?

A No, sir.

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Q Where did you do the analysis?

A The police crime laboratory.

Q And you know who has access to any of the narcotics in the Police Property Clerk's Office?

A No.

Q How many analyses have you done of heroin and cocaine since you have been a chemist?

A I would say over a thousand.

Q If you looked with thenaked eye four, five feet away could you objectively tell the difference between heroin and cocaine from looking at it?

A No, sir.

MR. STONE: No further questions.

THE COURT: All right, Mr. Costello.

CROSS EXAMINATION

BY MR. COSTELLO:

Q Dr. Yarchak, would you tell the ladies and gentlemen of the jury of the procedures required for depositing narcotics with the Property Clerk's Office and the procedure required to bring it to your laboratory for analysis?

A I am not exactly sure of all the procedures.

Q Would you tell the jury what you know, sir?

A Well, I know that at the time of the seizure

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the evidence is usually vouchered either with the precinct or whoever is doing the arresting. It is then delivered to the laboratory and in some kind of a sealed container.

Q Could you keep your voice up? I have a little trouble hearing you.

A Yes. At the laboratory the evidence is stored until the evidence is given to a chemist to analyse, at which time he opens the sealed container, weighs the material and then analyzes it. Then he reseals it and delivers it back to the Property Clerk.

Q Doctor, do you have any recollection or do you have any actual knowledge of a request being made by a physician and scientist who is attempting to develop a heroin detector and requested that a kilo of the original narcotics seized by Detective Novoa be forwarded to him for his experiment?

A I have no knowledge of that.

Q Do you have any knowledge, Doctor, as to whether or not such a device, namely, a heroin detector, was in fact later developed?

A I do not know.

Q Do you have any knowledge, Doctor, as to when the contraband heroin and cocaine was removed and the starch substance, probably flour, was introduced?

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A No, I do not.

Q Do you have any knowledge as to who handled the 100 kilos of heroin and cocaine in the period of time they were vouchered into the Department, the original analysis conducted and returned to the Property Clerk?

A I have no knowledge of that.

MR. COSTELLO: Thank you, your Honor. Thank you, Doctor.

THE COURT: Mr. Schwartz.

CROSS EXAMINATION

BY MR. SCHWARTZ:

Q Doctor, I would like to put a question to you and ask you to answer it yes or no, if you can. At this time while you sit in the witness chair do you know that somebody stole 100 kilos of heroin and cocaine from the Police Property Clerk's Office?

A No, I don't know that.

Q You don't know that at all?

A No, no.

MR. SCHWARTZ: I have no further questions.

THE COURT: Anything else?

MR. GIULIANI: No, your Honor.

MR. FELD: Nothing.

THE COURT: Thank you. You may be excused.

(Witness excused.)

* * * * *

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available,I want Mr. Boutureira available, and I am going to reopen this whole thing, and we will prove what happened.

MR. GIULIANI: Your Honor, they have all been available for cross examination.

MR. SCHWARTZ: I am talking about my case.

THE COURT: I understand. Well, we will come to that when we come to it.

All right.

Then suppose we all try to be here at 9:30 tomorrow morning and until then we will be in recess.

MR.COSTELLC: May it please the Court --

THE COURT: Yes, Mr. Costello?

MR. COSTELLO: In view of my colleague's statement that he wishes the production of the enumerated witnesses as part of his case, the defendant Novoa renews his continuing application originally contained in written papers in the form of a notice of motion and supporting affidavits for a severance.

THE COURT: I am not going to grant a severance, so that motion will be denied.

MR. COSTELLO: Will you note my exception?

THE COURT: Yes.

MR. GIULIANI: Your Honor, may the record reflect that I am handing two copies of our requests to

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mony tomorrow afternoon.

MR. COSTELLO: Thank you.

THE COURT: All right.

MR. COSTELLO: I would like to call Mrs. Coral Novoa.

C O R A L N O V O A, called as a witness on behalf of the defendant Novoa, being first duly sworn, testified as follows:

THE COURT: Mrs. Novoa, you may not have heard me explain to other witnesses, but this courtroom is very hard to hear in because of the high ceilings and the walls absorb sound. Will you try to keep your voice up so that these ladies and gentlemen at the far end of the box and the lady and gentlemen sitting at the far table can hear you.

Thank you.

DIRECT EXAMINATION

BY MR. COSTELLO:

Q Mrs. Novoa, have you ever testified in a courtroom before?

A No.

Q That was a good attempt, but as his Honor has indicated, the acoustics are very poor, and if our reporter cannot hear you, you see the problem, so please try and shout at me -- fair enough?

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Now will you tell the ladies and gentlemen of the jury where you live and whom you live with?

A I live at 1738 East 33rd Street, Brooklyn, with myhusband and my two sons.

Q Will you tell the ladies and gentlemen of the jury the ages of your sons?

A My eldest son is five years old, and the baby is five months old.

Q Will you tell the ladies and gentlemen of the jury when and where you were married?

A I was married October 27, 1962.

Q And where were you married, will you tell us, please -- and please try to keep your voice up.

A St. Peter's Catholic Church.

Q Is that in Brooklyn?

A Yes.

Q Now, Mrs. Novoa, did you know a man named Carl Aguiluz?

A Yes.

Q Please keep your voice up.

A Yes.

Q Now, did you know Carl Aguiluz both as a fellow officer of your husband, Joseph?

A Yes.

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Q And did you also know Mrs. Aguiluz?

A Yes.

Q On occasions did there come a time when Mrs. Aguiluz and Carlos Aguiluz came to your home socially?

A Yes.

Q Did there come a time, Mrs. Nova, when Carl Aguiluz lent you and your husband the sum of $1000?

A Yes.

Q Will you tell the ladies and gentlemen what was the condition of your house, what was wrong and how the money was used?

A We needed the money to cement the porch because it was getting a leak in the basement -- the garage. The porch is over the garage, and it leaks into the basement.

Q Just relax, Mrs. Novoa. Please keep your voice up.

I will stand outside the rail and if you shout at me, then we can hear you -- is that fair enough?

A Okay.

Q Now, Mrs. Novoa, did there come a time when you received word that your husband Joseph had been arrested and charged with a series of crimes of stealing and so forth?

A I heard it on the radio.

Q Would you tell the ladies and gentlemen of the

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jury the next thing that you learned and whom you learned it from?

A My husband called me and he told me he was arrested.

Q Please continue.

A And I kept asking him, "Where are you? Let me be with you. Can I go there?

"No.

"When are you going to come home?"

MR GIULIANI: Your Honor, I am going to object to this testimony.

THE COURT: Yes, sustained. Wholly irrelevant.

Q Now, Mrs. Novoa, did there come a time after your husband Joseph had been arrested that you received telephone calls from Carlos Aguiluz?

A Yes.

MR. GIULIANI: I am going to object to that, if your Honor please. It is after the conspiracy is over.

THE COUPT: Sustained.

MR. COSTELLO: May I know the basis for your Honor's exclusion?

THE COURT: Because it is not relevant to the case.

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MR. COSTELLO: Would you note my exception?

THE COURT: Of course.

Q Mrs. Novoa, by a notice of motion dated April 19 --

MR. GIULIANI: Objection, your Honor. Notice of motion is hardly relevant in this case.

MR. COSTELLO: May I continue my question with interruption?

THE COURT: No, I think not. If you are getting into matters which are irrelevant to the case on trial, there is no point in finishing the question.

Q Did Carlos Aguiluz ever make threatening telephone calls --

MR. GIULIANI: Objection.

Q -- about your husband?

A Yes.

MR. GIULIANI: Objection.

THE COURT: The objection is sustained. This line of questioning is not proper.

MR. COSTELLO: Will you note my continuing objection, your Honor --

THE COURT: Of course.

MR. COSTELLO: -- to the unfair application of the law in regards to Joseph Novoa.

MR. GIULIANI: Objection to the comment and

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ask that it be stricken from the record.

THE COURT: No, I will let it stand. Counsel has a right to make a statement on the record.

Q Now, did there come a time, Mrs. Novoa, when something happened to your father?

MR. FELD: Objection.

THE COURT: How would that be relevant?

Q Did there come a time -- I will withdraw the question.

Did there come a time, Mrs. Novoa, when Carlos Aguiluz came to the funeral parlor where your father was being waked and asked for the return of the thousand dollars that had been lent to your husband?

A Yes.

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained.

MR. COSTELLO: May I ask the basis for that, your Honor?

THE COURT: Irrelevant.

MR. COSTELLO: Would you note my continuing exception to your Honor's rulings in regard to the defendant Joseph Novoa?

THE COUPT: Of course.

Q And did you, Mrs. Novoa, put your complaint in

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writing and give notice of that --

MR. GIULIANI: Objection, your Honor.

Q -- the United States Attorney's office?

A Yes.

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained.

Mr. Costello, the rule is, as I understand it, that the bias of a witness for the government, such as Aguiluz, must be shown initially on cross-examination. Now if you asked questions of Aguiluz on cross-examination as to these matters and he gave answers which you wish to show were untruthful through this witness, that I would permit, but I recollect no question asked of Aguiluz as to any conduct at the funeral of this witness's father.

MR. COSTELLO: Your Honor, I think -- I am not sure but I think you are in error as to that recollection, and I remember distinctly, your Honor, that I asked Carlos Aguiluz if he had telephoned Mrs. Novoa and threatened her, and he said no, he did not threaten her but he admitted telephoning her.

MR. GIULIANI: The second is true, your Honor; the first is not true. He did ask Mr. Aguiluz whether he telephoned Mrs. Novoa. Mr.Aguiluz testified that he had, and he asked, "Did you threaten her?", and he said no,

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he did not. He asked no questions about funeral parlor.

THE COURT: Then as to telephone calls --

This is to show bias on Aguiluz?

MR. COSTELLO: Yes, sir.

THE COURT: All right, as to telephone calls to this witness which were inquired of Aguiluz on cross-examination, that I will permit. I do not believe, though, Mr. Costello, that there is anything asked of Aguiluz about the funeral parlor, and on that basis I would have to sustain that objection.

MR. COSTELLO: As I said, your Honor, I think I did but I am not sure.

THE COURT: All right.

MR. COSTELLO: The jury's recollection will prevail.

THE COURT: All right.

Q Now, Coral, will you tell us --

THE COURT: You understand the basis on which I am ruling is a matterof evidence law, whether you agree with it or not --

MR. COSTELLO: I think I know the law of evidence, your Honor. I have been doing this a few years.

THE COURT: The government agrees that you did ask Aguiluz on cross-examination about telephone calls to

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this witness, so I will permit that on your statement that youwant to show bias of the government witness Aguiluz.

BY MR. COSTELLO:

Q Mrs. Novoa, would you please keep your voice up and tell the ladies and gentlemen of the jury -- just relax -- tell the ladies and gentlemen of the jury in your own words exactly when Carlos Aguiluz telephoned you, what he said to you, what you said to him, and what your reaction was. Tell the jury all about it.

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mcbr 1 C. Novoa-direct

MR. FELD: I object to the reaction.

THE COURT: No, not what her reaction was. The point at issue is the alleged violence of Aguiluz. That I will permit you to inquire about, what Aguiluz said.

MR. COSTELLO: Yes, your Honor. We will let the jury evaluate the facts.

Q Mrs. Novoa, please tell the jury about the telephone call.

A The first time he called was March 11th and that day I remember because that is the day my husband spent the night in jail and that night Mr. Aguiluz called and asked me "Is Joe home"?

I said, "No, he isn't."

"Well, tell him to call me at Mr. Puccio's office. Do you know what time -- could you tell what time you are expecting him?"

I said, "I'm not," and I hung up.

Then I was frightened to death.

MR.FELD: Objection, your Honor.

THE COURT: Yes, Mrs. Novoa. Don't tell us your feelings or beliefs or emotions. Just tell us what he said to you and what you said to him. You understand?

THE WITNESS: Yes.

THE COURT: These are rules of evidence that we

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have to live by. Do you understand that?

THE WITNESS: Yes.

THE COURT: All right.

A The next time he called me he asked "Is Joe home?"

"No, he isn't."

"Please tell him to talk to me."

"Carl, he is not going to talk to you."

"Tell him it is for his sake, for your sake and your kids' sake. Tell him to call me at Mr. Puccio's office."

"I'll tell him."

That night he called back: "Is Joe there?"

I said, "Carl, he does not want to talk to you."

Another time he called again: "Does Joe want to talk to me?"

"Carl, he does not want to talk to you."

"Why?"

I said, "Carl, how could you call here? How could you call here after what you did to him, after how you lied about him? How could you call me?"

I said,"How did you go to my father's wake to get the thousand dollars he owed you knowing you already told these lies about him and he was going to be arrested and after he was arrested he wouldn't be able to pay you back?"

CROSS EXAMINATION

BY MR. FELD:

Q Good morning, Mr. Novoa. How long have you known Carl Aguiluz?

A Oh, God. Four years.

Q And he was your husband's partner, was he not?

A Yes.

Q He had phoned your house before March 11th of this year, had he not?

A Right.

Q Occasionally he would telephone the house; is that correct?

A Right.

Q And you socialized with him and his wife; is that correct?

A Well, we were at their house twice and they came to our house once.

Q Do you know who Mr. Puccio is?

A He is a U.S. Attorney.

Q Inthe Eastern District of New York?

A Right.

THE COURT: I guess by this time the jury realizes the Eastern District of New York is Brooklyn and Long Island. I think that we have all assumed that.

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Q During any of these conversations did Mr. Aguiluz tell you that he was calling at the request of Mr. Puccio?

A No.

Q Did he mention that Mr. Puccio had said he wanted to know whether your husband was willing to cooperate with the government?

A No.

Q Do you recall the day when your husband was arrested?

A Yes.

Q What date was that?

A March 8th.

Q And eventually he came home that night; is that correct?

A Yes.

Q Did he tell you that he had spoken with certain Assistant U.S. Attorneys following his arrest?

A Yes.

Q Did he tell you that the government had asked him whether he was willing to cooperate?

A Yes.

Q And did he tell you that he had said that he wanted to consider the matter but first wanted to talk to you?

A Yes.

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Q Was the thousand dollars eventually repaid?

A Yes.

MR. FELD: No further questions.

THE COURT: Anything else, Mr. Costello?

MR. COSTELLO: Yes, inview of Mr. Feld going into new matter.

REDIRECT EXAMINATION

BY COSTELLO:

Q Mrs. Novoa, when Joseph came home and told you of his conversations with United States Attorneys following the day of his arrest -- do you remember Mr. Feld asking you that?

A Yes.

Q Did he also tellyou that he had spoken to either a Mr. Higgins or a Mr. Jaffe and told them that he would take a lie detector test if they promised him to print the results on the front page of the Daily News?

A Yes.

MR. COSTELLO: No further questions.

THE COURT: Anything else?

All right, thank you, Mrs. Novoa. You may be excused.

(Witness excused.)

THE COURT: All right, next witness.

* * * * *

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MR.COSTELLO: At this time, your Honor, the defense calls Detective Joseph Novoa.

J O S E P H N O V O A, called as a witness in his own behalf, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COSTELLO:

MR. COSTELLO: I presume Mrs. Novoa may now sit in the courtroom?

THE COURT: She may.

MR.COSTELLO: Thank you.

Q Joseph, I am trying to expedite this and I am going to ask you some questions and whenver possible try to give the answers in narrative form, please. Fair enough?

A Yes.

Q Would you tell the ladies and gentlemen of the jury, please, when you were born, something of your educational background, the jobs, the positions that you held and when you became a New York City police officer?

A I was born September 9, 1941, Brooklyn, New York. I attended St. Charles' Borromeo Grammar School and St. Augustine's Catholic High School. I graduated from the Brooklyn Academy High School. I took a position at the Manufacturers Hanover Trust Company as a bank teller.

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In 1963, February 15th, I became a New York City police officer.

Q Did you give all this information to the New York City Police Department in your application to take the civil service examination to become a police officer?

A Yes, sir.

Q Did you also receive certain training at the New York City Police Academy?

A Yes, I did.

Q Would you tell the ladies and gentlemen of the jury the approximate period of time that you were trained at the New York City Police Academy?

A I spent approximately five or six months at the PoliceAcademy.

Q After that, Joseph, would you tell the jury your first assignment after you graduated from the Academy?

A In the summer of 1963 I was assigned to patrol force in Bedford-Stuyvesant.

Q And following that, Joseph, where was your next assignment?

A In the Spring of 1967 I got a civilian plainclothes detail in the Bureau of Special Services.

Q Would you elaborate on that, telling the jury what the Bureau of Special Services is?

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A That unit has many functions. They are primarily charged with guarding the President of the United States along with Secret Service. They also work with subversive groups and my function there at the time was to participate in demonstrations with various groups, whether they were subversive or not, primarily with the point being that I could as a participant tell if the demonstration would become violent. In turn I would notify the Police Department and after awhile we could be able to tell the Police Department how to deploy men, because we would find out whether certain groups were participating, whether the demonstration, in effect, would be a large one or a dud, like some of them are sometimes.

Q Did there come a time when you were assigned to plainclothes and narcotics detection and apprehension?

A Yes, sir.

Q Are there two or perhaps even more levels of training for specialized services in the field of narcotics detection and apprehension?

A Yes, there is.

Q Would you tell the ladies and gentlemen of the jury what this training is and what these various levels are, please?

A In 1967, September, I was first assigned to

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narcotics and assigned to what was called Group 5 which covered the area of Brooklyn and Staten Island. My duties at that time were to investigate complaints from the public both anonymous and complaints that people left their name, primarily functioning around investigations within schools and primarily dealing with street traffickers, addict pushers and low level narcotic traffickers.

(Mr. Schwartz was present at this point.)

Q Would it be fair to say that this was in the nature of basic training by the Police Department to familiarize you with the general operations on the street of how narcotics pushers worked?

A Yes, sir. At the time myself and all these other members that were assigned that date were fellows that had time before in narcotics and they showed us the forms that had to be prepared, the way to make observations, how to deal with informants and how to draw up search warrants, and that was the training level that you started at at the time.

Q And during this period of time, Joseph, were you also advised by not only the Police Academy but your superior officers as to the rights of citizens and the necessity of obtaining a search warrant either to search premises or a person or to conduct electronic surveillances, a telephone

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tap or otherwise; is that correct?

A Yes, sir, mostly on search warrants because at that level very few wiretaps were applied for because the investigations didn't warrant it.

Q Was this also part of the basic training of the New York City Police Department to familiarize officers being trained in narcotics as to the extensive damage, the destruction that results from the sale and traffic in narcotics?

A Yes.

Q I think you told the ladies and gentlemen of the jury in that regard you patrolled or observed certain areas where school children congregated; is that correct?

A That is correct.

Q And I think your wife indicated you have two sons; is that correct, sir?

A Yes, I do.

Q Did there come a time when you were -- perhaps it is not entirely correct, but in effect promoted, brought up to the second level after you passed basic training, so to speak?

A Yes, sir. In June of 1969 the Police Department expanded the Narcotics Division. When I first went into it there was approximately 150 men for the whole city.

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They decided to increase the membership and at one time I know for a fact it had gone up to almost 800 men. In June of 1969 they decided to expand the Special Investigation Unit and I was assigned together with 32 members on that day.

Q Who was your immediate CO or commanding officer? Keep your voice up and tell the jury all about it, Joseph.

A In Brooklyn, my first assignment, my immediate superior was Lieutenant Robert Howe, who is now an inspector on the Federal Joint Task Force and when I went into SIU my immediate supervisor was Lieutenant Egan and Captain Dan Tange.

Q You told the ladies and gentlemen of the jury that your first supervisor was in Brooklyn. Lieutenant Egan and Captain Tange, I presume, were in Manhattan?

A The officers of the SIU are located in Manhattan and SIU was charged with investigations of all five boroughs.

Q That was more or less the headquarters for SIU and it was in Manhattan covering all five boroughs which constitute the City of New York; is that correct?

A Yes, sir.

Q At this time were you a member of any team when you had reached this stage of narcotics detection and

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apprehension?

A My first partner was also transferred with me from Brooklyn. That was a Detective James Fox. Because of such a large membership coming in, new members coming into SIU there was lots of confusion as to teams and supervisors and basically what happened was whoever came up together from Brooklyn or the Bronx paried off with each other and that became a team, so actually my first team was a two-man team with me and James Fox.

Q For how long a period of time did this team of Novoa and Fox exist?

A I worked with Detective Fox up until the time he was transferred in January of 1970 to the Task Force. During that time for one day I worked with Detective Sottile and for one day I worked with Detective Aguiluz. They assisted us on an arrest that me and Fox had developed and they were there on the day that we arrested an individual.

Q To your knowledge, Joseph, were Aguiluz and Sottile partners at that time?

A Yes, they similarly came up like me and Fox, except they came from the Borough of Queens.

Q And Sottile, I believe, is the government witness who testified as to flaking or the planting of a pistol on a man at some later time?

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MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained. That is a wholly improper question. Go ahead.

Q All right, Joseph, taking it in chronological order, did there come a time when you met a detective Peter Daly?

A Yes, sir.

Q Would you tell the ladies and gentlemen of the jury all about Detective Daly, what he looked like, what sort of a person he was? Tell the jury all about him.

A I started to work with Detective Peter Daly in February of 1970. I started before -- Detective Fox, my partner, was transferred to another group. I was left without any partners. Detective Daly had been working with another group of fellows that I didn't know and we had had conversations prior to this and I approached him and I asked him, "Pete, Jimmy Fox got transferred. Would you like to work with me? I have got pretty good information in Brooklyn."

He said, "Yes."

He had a commitment to continue some investigation with these other fellows that he was with, so I actually worked with him and four other individuals. We finished that investigation and we went on our own as a team.

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Q Could you describe Detective Daly physically for the jury?

A Pete Daly is about six foot, about 195 pounds. He is a very strong man, big hands. His nose had been broken about eight times. He was losing his hair. But he had a very, very pronounced Irish accent. Sometimes it was hard to understand what he was saying, that is how heavy his Irish accent was.

Q You mean his brogue?

A His brogue.

Q You are of Spanish extraction?

A Yes, I am, sir.

Q How did you find Detective Daly as a man, as a New York City police officer?

MR. GIULIANI: Objection, yourHonor.

THE COURT: Sustained.

Q Did you get along well with Detective Daly?

A Yes, sir.

Q Did you find him to be an honest and honorable police officer?

MR. GIULIANI: Objection, your Honor.

THE COURT: Yes, sustained.

MR. COSTELLO: Will you note my objection?

THE COURT: Yes, of course. You can't ask him

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for his conclusion or opinion.

Q Did you work with Detective Daly?

A Yes, I did.

Q Now we will start going into some of your activities. You were working with Detective Daly.

A Yes, sir.

Q Would you tell the ladies and gentlemen of the jury some of your activities, just you and Detective Daly? What you were doing, what results you effectuated?

MR. GIULIANI: Could we set a time, your Honor?

THE COURT: Yes, try to.

Q Would you indicate the approximate date that you and Detective Daly became partners?

MR. COSTELLO: Incidentally, your Honor, if they now have the UF 16s of Detective Novoa I would like him to allow him to refresh his recollection as to any dates.

May I have them, Mr. Giuliani?

MR. GIULIANI: Your Honor, I am not even quite sure what the UF 16s are, but whatever I have of Detective Novoa has already been turned over to Mr. Costello long ago.

MR. COSTELLO: You have one memo book, Mr. Giuliani. May I have it?

(Pause.)

THE COURT: Can we go on, please?

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MR. COSTELLO: All right, your Honor.

Q Joseph, could you tell the ladies and gentlemen, while they are looking for your memo book --

MR.COSTELLO: Mr. Feld, I see you have some memo books there?

MR. FELD: Would you like them?

MR. COSTELLO: I am asking you, sir, are they Detective Novoa's memo books?

MR. FELD: That is what I am trying to find out.

THE COURT: Can we settle this point?

MR. GIULIANI: These are Detective Aguiluz' memo books, your Honor.

THE COURT: All right. The Novoa memo books have already been turned over?

MR. GIULIANI: We turned over one memo book, the one that we had, to Mr. Costello last week.

THE COURT: And you don't have any more?

MR. GIULIANI: We don't have any more.

MR. COSTELLO: I returned that memo book to Mr. Giuliani since it was part of his material.

THE COURT: He says he doesn't have it.

Q Tell the ladies and gentlemen of the jury, to the best of your recollection, the approximate date

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that you and Detective Daly became a team or started working together?

A I believe it was in February of 1970 or maybe the latter part of January. I specifically remember making one arrest with Detective Daly. I think that Detective Joe Strano helped us, and there were at least two others and I don't remember their names now. This was really the first arrest Daly and I had participated in as partners.

Q What was your relationship with Daly? Did you get along well personally as a Police Department team?

A Yes, sir. We had a lot of mutual interests. I played soccer. He played soccer, which isn't too common in this country, to have two police officers meet each other and have that in common. He was --

THE COURT: The question was did he get along with Daly and the answer was yes, so I think it is time for another question.

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Q Did there come a time when Carlos Aquiluz came into the picture?

A Yes, sir.

Q And was that in regard to his acting as an interpreter on a warrant for a wiretap?

A Not at the first -- not at that time, sir.

Q All right, I am sorry. Tell the jury the first time after the initial meeting that you told them of that Carlos Aguiluz came into the picture.

A Prior to that when I was really working with Fox, I had obtained a court order for an interception in the vicinity of 56th Street in Manhattan. The subject was Spanish-speaking. I can speak Spanish. However, when it comes to translating wiretaps you have to be bilingual because not only do you have to understand what the person is saying, you have to have the inflection of the voice. They do not say on the tap, "I am selling dope." You have to know what they mean when they talk about clothes, hats, sizes of hats. When you have an interpreter on the wiretap he must be bilingual and not have just the knowledge of Spanish that I have, that I can question somebody or I can read an article in the newspaper and understand the gist of it, but when I apply for this wiretap I knew I needed an interpreter, and I

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asked Detective Aguiluz to become my interpreter on this wiretap. This was in November of '70 -- of 1969.

Q Did Detective Aguiluz in fact act as your interpreter on that wiretap?

A Yes, not only in his role of interpreter, which was his primary role, but he also assisted in the tailing and investigation.

Q Was he also an expert on wiretaps?

A He showed me that he knew quite a bit about it, because we had trouble at the plant where the machines were located. They would break down, and one of the rules of the police that installed them, the CID, is, "If it breaks down before you use it any more, call us" -- but Carl Aguiluz could fix the machine and change wires around to get the machine going.

Q Could you tell the ladies and gentlemen of the jury who the CID was?

A That is the Central Intelligence Division, and one of their many duties is the physical installation of the Police Department machines to intercept telephone conversations.

Q To your knowledge had Carl Aguiluz ever worked in the Central Intelligence Division?

A No.

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Q But you told the ladies and gentlemen of the jury that he was quite familiar with the wire installation, of a wiretap and therepair of machines that you told us about?

A Yes. When he fixed these machines --

MR. GIULIANI: Objection, your Honor.

THE COURT: On what ground?

MR. GIULIANI: We have been over this once before. This is a leading question, an explanation by the witness.

THE COURT: No, I will permit it.

A (Continuing) When the machine broke down the first time and he fixed it, naturally we asked him, "How do you know how to fix it?"

And he said, "Before I came into the job I used to be a TV repairman. I know quite a bit about electronics.

Q After that incident, Joseph, did there come a time when Aguiluz either joined or was assigned to you and Detective Daly?

A Yes, sir, after what was known as the McAlpin case that Aguiluz worked on --

Q Did you work on the McAlpin case?

A No, sir.

Q But do you have knowledge of it from your

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Police Department experience?

A Yes, sir.

Q And since there has been testimony about it, would you tell the ladies and gentlemen of the jury something about the McAlpin case?

MR. GIULIANI: Objection.

THE COURT: Yes, sustained.

MR. COSTELLO: May we have a stipulation that Mr. Novoa did not work on the McAlpin case, as Mr. Seeley did not say that he worked on the McAlpin case?

MR. GIULIANI: I do not know what we have to stipulate that for. The government does not claim that.

THE COURT: No, you do not have to stipulate that.

You did not work on the McAlpin case?

THE WITNESS: No.

THE COURT: All right, that ends it.

Q Now continue, Joseph, as to when Aguiluz joined you and Detective Daly.

A This was in the latter part of February of '70, or the first two days of March. He came to me alone and said, "Joe, I am not working with those other guys any more."

He said, "You know, we made a nice collar.in

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Brooklyn, and I likeworking with you. How about you and me becoming partners?"

I told him, "I like working with you" -- he is a very hard worker -- "but I started working with Daly" -- but he is also a very good detective, if he would consider working with me and Daly as a three-man team, fine, we could all work together."

Q At this point did Carl Aguiluz show any resentment because of your preference for Daly or your friendship for Daly?

MR. GIULIANI: Objection, your Honor.

THE COURT: Yes, sustained.

Q What did you observe about Carlos Aguiluz during the course of the conversation you have just told the jury?

A During this conversation, before he agreed to the three-man team, he had indicated he would rather work on a two-man team -- me and him together, but finally he conceded when I told him how I felt about Daly and how successful we had been working together andwhat a good worker he was, it is my opinion and is still my opinion --

MR. GIULIANI: Objection, your Honor.

THE COURT: Well, this is expressed, I take it, to Aguiluz. Is it what you said to Aguiluz?

THE WITNESS: Yes, this was during conversation.

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It was my opinion, I told him, that a three-man team can get much more done than two guys.

Q There came a time, did there not, when there was in fact this three-man team?

A Yes, sir.

Q Would you tell the ladies and gentlemen of the jury how this three-man team operated, what each of you did, something of your function, how you did it, where you did it?

A When we first started to work in a team together we evaluated each other's information --

Q Excuse me for interrupting you, Joseph, but is it correct to say that a good deal of Intelligence and police work is dependent upon information?

A Yes, it is.

Q And is it part of Intelligence and part of police work for both the Federal Government and the New York City Police Department to have informers?

A Yes, it is.

Q Would you tell the ladies and gentlemen of the jury whether or not you have any knowledge as to the requirement that informers be registered?

A Yes, I do.

Q Is that correct?

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A Yes.

Q All right. Now you started to tell us something about the information that you had. Will you continue, please, with this conversation?

A All right. The three of us got together. We started to discuss what information we had that was active as to persons dealing in narcotics at this time.

We had just exhausted Daly's information with this arrest that me and him made, as I previously explained. My information that I had used to obtain this court order, that I previously explained, had sort of dried up, and Carl said, "Well, from the McAlpin case there is a lot of guys left over on 14th Street," and as a result of this conversation we decided to direct our concentrated efforts in the vicinity of Seventh Avenue and 14th Street.

Q Would you tell the ladies and gentlemen of the jury what efforts were made, in substance, precisely what you did, how the team operated?

A Well, we started in the middle of March conducting observations in the vicinity of the Cafe Madrid, and luckily we made an observation of this individual known as Luguizamon on March 30th, after being there only two weeks, which resulted in a large seizure and the arrest of two individuals.

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Q Did that case, Joseph, the Luguizamon case --

A Yes, sir.

Q -- later become known to the New York City Police Department and others as the Hotel Taft case?

A Yes, it did.

Q All right. Now, Joseph, I want you to tell the ladies and gentlemen of the jury everything about Luguizmon, what you did and what Daly did, and what you know of Aguiluz's activity, but I want you to tell them everything from your first observation, the source of your information. Tell them everything that happened.

A Just prior to the closing hours of the Cafe Madrid on 14th Street we observed a male, white, almost completely white hair, well-dressedwith a black suit, exit.

The three of us were seated in a car parked on the corner of Seventh Avenue and 14th Street, directly in front of Bickford's.

Carl Aguiluz told me and Daly, "That's Luguizamon. He is one of the individuals that got away in the McAlpin case. We have to tail him."

We tailed Luguizamon to the Hotel Taft. We saw him get on an elevator.

Detective Aguiluz went to the manager or the night man that was working, had a conversation with him,

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and asked him if he could please look at the registrar book. He did go over looking at the registrar book and found that Luguizamon was checked into a room -- the number I don't recall right now, but it was up on at least the fifth floor or six floor. I know we had to take the elevator to go up there.

Q All right, continue, Joseph.

A Through the good efforts of the night man he got us a room not directly next to Mr. Luguizamon but in the airshaft -- the windows face each other. You could see Luguizamon's window from the apartment that the hotel had loaned us to make these observations.

Q Incidentally, Joseph, was the Hotel Taft very cooperative with the New York City Police Department?

A This was the first time that I had been in the Taft.

Q All right, continue, please.

A When we established our observation point we saw light in the room where Luguizamon was -- the shades was drawn tight to the window sill but we could tell that there was a light on -- there was a shadow walking past it.

About an hour after this the light went out. We opened the door to make sure that he wasn't exiting, and we all assumed that he went to sleep.

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Q Incidentally, Joseph, was Luquizamon, this man you have described who exited from the Cafe Madrid, a tall man with dark or black suit, gray hair -- was he an internationally famous soccer player at one time?

A We found that out after the arrest.

Q And Aguiluz you say had remembered him from the Hotel McAlpin?

A From the McAlpin case as one of the individuals that wasn't apprehended.

Q Now we reached the point where Luquizamon had apparently gone to bed for the night?

A Yes, sir.

Q What was the next thing that you saw from the room?

A Well, we all stood there in the room, took turns keeping our eyes on the window -- some guys napped.

I remember early in the morning, I guess about 8 o'clock, we were all pretty well rested, and somebody decided to call at that time Sergeant Stefania, because he was our supervisor, and he wasn't aware of our presence in the hotel, and we wanted to tell him because he was our boss and in the event anything happened, at least he would be able to explain to his superiors what we were doing in the hotel.

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I called Sergeant Stefania and told him, "I don't know what we have but I know right now Carl says there is a guy who he felt was a participant in the McAlpin case that wasn't arrested, and we now have him in a hotel room on observation, and we are going to stay with him to see who he meets."

He told me he would over to the hotel as soon as he could.

We gave him our room number, and about an hour later he arrived. He called us from the house phone downstairs --

Q Who arrived?

A Sergeant Stephania.

Q All right, continue.

A He called us from the house phone to our room and Sergeant Daly and I went downstairs to explain to him, and Detective Aguiluz remained in the room watching the window.

Q You don't know what Aguiluz was doing, if anything, while you and Daly went down to meet your superior, Sergeant Stefania, is thatcorrect?

A No, sir.

Q Now, what did you say to Stefania and what did he say to you, if anything?

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A Well, basically, we said the same conversation about who we had under surveillance, and we had a plan that we would take different positions in the lobby of the hotel -- not stand three together, and in the event that he came out Daly would be with Sergeant Stefania so that he could tail him because he had seen him earlier, that is, Luguizamon -- were going to tail him, and I was on the other side of the hotel.

Luguizamon did come off the elevator and did leave the hotel. Daly and Sergeant Stefania followed him.

They came back in a minute and said, "I don't know what happened, he got lost in the pedestrian traffic" -- they thought he went into another hotel. They lost him. This conversation was taking place inside the lobby of the Taft.

I was walking, listening to Sergeant Stefania, towards the cocktail lounge when I say Luguizamon and another individual whom I had never seen before -- a male, seated at a table in the cocktail lounge.

Q Now, Joseph, at this point Daly -- Detective Daly and Sergeant Stefania returned. Did they tell you that they had lost Luguizamon when he exited from the Taft?

A Yes, we had this conversation as we were walking

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from one side of the hotel lobby to the other.

Q Just by chance you observed Luguizamon in the cocktail lounge?

A Yes. When we got to the other side of the hotel, we were in the vicinity of the cocktail lounge and I was discussing what we should do, and I looked up and Luguizamon was sitting there with the other individual.

Q I believe you have told the ladies and gentlemen of the jury that you had no idea what Aguiluz was doing upstairs in the hotelwhile you were downstairs and Detective Daly and Sergeant Stefania had gone out in an attempt to tail Luguizamon, is that right?

A That is correct.

Q Did you ever make a call upstairs to Aguiluz?

A No, sir.

Q What did you do? What happened next?

A We were signalled by somebody in the hotel personell at the house phone that they were asking for the detectives.

I ran over to the phone. Carl said to me, "Grab him, he's got dope."

I put the phone down and relayed the same message to Daly and Stefania. I told them, "Go out to the street and come in the street exit -- entrance to the cocktail lounge, and I will enter the cocktail lounge from the

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hotel."

I waited. I saw Detective Daly come in, and at this time I took my gun out, I entered from the other entrance, I walked up to Luguizamon and put a gun to his head, I showed him my badge, I told him in English and in Spanish, "Don't move. Police."

The other individual made an attempt to get up, and Daly put his two hands on him and restrained him, and he just sat down.

On the table was a pouch, about 8 inches by 6 inches, a fine leather pouch.

I opened it up and there was nothing in there but passport and papers.

Sergeant Stefania was also at the table. He said, "Let's take him up to the room where Aguiluz is."

We all went to the elevator with the two suspects -- Daly, Stefania and myself.

We went up to the room. We got off the elevator and we were walking towards the room. The door is open and Carl has a smile on from ear to ear, and behind him on the bed is all the junk -- bags and bags of white powder.

Q You used the term "junk," Joseph?

A Yes, sir.

Q Is that a police term for narcotics?

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A Yes, sir.

Q All right.

A I remember at this time seating the two individuals down, the two suspects down. I remember Daly hugging and kissing me and kissing Carl and Stefania -- all excited, and at this time Sergeant Stefania says, "I have to call the office. We have got to get Egan down so at least the precinct will know."

Q Lieutenant Egan was your superior, was he not?

A He was in charge of all the teams in SIU at that time -- and the Sergeants had to answer to Lieutenant Egan.

Q Did you, Joseph, during the course of your training and the course and the period of time that you were under Lieutenant Egan at all times find him to be an honorable police officer?

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained. Wholly improper question.

MR. COSTELLO: Very well.

Q After your telephone call was made to Lieutenant Egan, Joseph, did there come a time when Lieutenant Egan as a police officer came to the Hotel Taft?

A Yes, sir. He responded to the Taft with another detective named Charles Wooster.

Q Tell the ladies and gentlemen of the jury what

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happened. Tell them everything, Joseph.

A Sergeant Stefania had told Lieutenant Egan, "When you get to the hotel" -- whatever the room number that we were in, but he told Lieutenant Egan, "Use the house phone and tell us you are here and we'll meet you downstairs in the lobby."

And we stayed in the hotel room with the two suspects and the drugs, when Egan got there, which was a very short time, because he was at the Old Slip Station and drove up to the hotel -- we did receive the call. We took the suspects, the drugs and everybody went to the lobby and met with Lieutenant Egan.

Sergeant Stefania briefed Egan as to how the events came about, what he estimated the size of the drugs, the amount of drugs that were taken, and he mentioned the fact that Luguizamon had in fact been Carlos's -- the individual that Carl had seen in the McAlpin case.

At this time Carl Aguiluz and Sergeant Stefania told myself and Lieutenant Egan about how good the hotel had been to us and that it would be unfair to take Luguizamon out on the arrest and stick the hotel for the bill. Luguizamon did have traveling money, what we call pocket money. I -- I really don't remember how much money -- and I remember Detective Aguiluz and Sergeant

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Stefania going back to the hotel personnel and paying Mr. Luguizamon's bill.

Q Continue, Joseph.

A Lieitenant Egan, Charley Wooster were in a Police Department car, an unmarked car. It was decided that the defendants who were now handcuffed would travel in that car with the defendants and the heroin in that Police Department car.

Q Now, Joseph, at this time did you have an automobile?

A Yes, sir.

Q Will you tell the jury, please, what kind of automobile you had and what condition it was in?

A It's a 1968 Volkswagen, red. It had been hit pretty hard on the door, and the door wasn't working -- wasn't closing.

Q Was it possible, Joseph, the day you were at the Taft, for your car, the Volkswagen that you have described to the jury, to have been locked?

A Well, if you slammed it very hard sometimes it locked -- the lock would catch, but I used to close it and walk away and left it open.

Q How about the trunk?

A The Volkswagen has only one locked trunk.

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You go into the trunk -- and I didn't have the accessory that would lock -- my Volkswagen -- the handle to open the trunk was inside the car. You pulled and the trunk opened, so how can you lock the trunk?

Q Will you tell the jury what year and model the Volkswagen was?

A 1968, a bug model, red.

Q Joseph, did you hearDetective Stefania say that you walked out of the Hotel Taft carrying a ladies' overnight case about this size (indicating), containing $40,000 in money, in cash?

A Yes, I heard him say that.

Q Did you carry out a black overnight case?

A No, I didn't. Sergeant Stefania lied.

MR. FELD: Objection.

THE COURT: Yes.

Q Did you carry out an overnight case, Joseph?

A The only case that I carried was a suitcase containing the 28 packages of junk.

Q And I think you told the jury that you took that suitcase containing the junk, the narcotics, and you put it in the police car outside, is that correct?

A With Lieutenant Egan, with Charley Wooster and with the two prisoners.

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Q And was that ultimately vouchered in?

A Yes, it was.

Q Did you see any money outside of the pocket money that Luizamon had?

A That is the only money I saw -- the money they took off him to pay the hotel bill.

Q That Stefania and --

A And Aguiluz took.

Q -- took to pay the hotel bill as an indication of what the rates were, is that right?

A That is right. As a matter of fact, they gave Luguizamon a bill "Paid."

Q They gave him a receipt?

A Of course.

Q And as you went through the lobby was there anybody else in the lobby?

A When Lieutenant Egan called and said he was in the lobby, there had been either a convention of junior high school children or high school children, and there was a busload apparently that had dumped them in the hotel lobby. There was literally -- there had to be at least two hundred children, which made it very awkward when we exited the elevator with the two individuals handcuffed

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and, you know, us literally walking through these children when we got to the other side of the hotel, where there was an area that there weren't any children.

Q And the only thing you had in vour hand while exiting from that hotel was a suitcase with 28 packages of narcotics?

A That is correct.

Q Did you see a ladies' overnight case, a black traveling bag?

A No, sir.

Q All right. Now, Officer, will you tell us the next thing, what you did after that --continue with your story, please. You are now leaving the hotel.

A Charley Wooster, Lieutenant Egan, the prisoners and the drugs went in the department carto the 18th Precinct, which is on 54th Street and Eighth Avenue, I believe.

Q And were they vouchered in at this point?

A Not just yet. They pulled away. I went in my Volkswagen behind them, and I believe Daly's vehicle was there, and he went behind my vehicle, and we left Aguiluz and Stefania to come with us in their vehicle, and we all went to the 18th Precinct.

Q Let us see, Joseph, if we have the chronology of the caravan. The first vehicle contains the commanding

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officer, Lieutenant Egan, his associate or driver, Mr. Wooster, and is carrying the contraband that was seized, is that correct?

A It is in the trunk locked, yes.

Q In the trunk locked.

A And safeguarded, of course.

Q And were the prisoners also in the car?

A Handcuffed in the car.

Q Secured.

A There is a bar in the Police Department car. There is a bar in the back seat. When you handcuff somebody you handcuff them to this bar so they don't punch you as you drive.

Q So the prisoners are secured.

A Correct.

Q On the bar handcuffed.

A Right.

Q The narcotics are secured in the trunk of the car?

A Yes.

Q And there are Lieutenant Egan on duty with his official .38 and Officer Wooster on duty with his official .38?

MR. GIULIANI: Objection, your Honor.

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THE COURT: Yes, sustained.

Q Is there any requirement that police officers carry a revolver while on duty?

A Unless you are in an undercover capacity where it would reveal your identity, you are always supposed to have a revolver.

Q Is there a specific calibre and type of weapon required by regulations?

A Yes, sir.

Q Tell the jury,please.

A Yes, sir. Everybody carries a .38.

Q All right. That is the lead car inthe caravan. You are next in your Volkswagen, is that correct, sir?

A Yes, sir.

Q And following you is Detective Daly in his car; is that correct?

A Yes,sir, I believe so.

Q And Aguiluz and Stefania are back still in the Hotel Taft, is that correct?

A As we entered our respective vehicles we left each other in the vicinity of the Hotel Taft.

Q So you do not know where they are?

A After I was driving behind Egan, I do not know where anybody else was. I looked once and I saw Daly in

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the rearview mirror.

Q So Aguiluz and Stefania could have taken the bag --

MR. FELD: Objection, your Honor.

Q -- the black traveling bag with the money?

THE COURT: It is argumentative, hypothetical and speculative. Please don't ask such questions.

Q What was the next thing that happened, Joseph? Tell the jury everything.

A While we were all in the 18th Precinct, Detective Wooster, who is the best typist, started typing out forms to be typed. I was attempting to question the other suspect other than Luguizamon -- Diaz, as to where he had come from, what was his hotel, because we had never seen him before until he was seated at the cocktail table.

I remember him having a conversation with me saying, "I know Mr. Luguizamon for years. He is a soccer player, and we are just social friends. I don't know what this is all about. I never saw those packages."

That was my conversation with Diaz. That is what I was primarily doing while we were in the 18th Precinct.

Q Did there come a time, Joseph, when the case came up -- withdrawn.

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Who took credit for the arrest?

A Detective Aguiluz took the main arrest, which was Luguizamon.

Q Would you explain the jury, please, what taking an arrest means and what it entails?

A In a partnership, although everybody gets credit, only one person can physically process somebody, go to court with the individual.

Historically, that one person is the officer who is saying, "This is my case," and Detective Aguiluz felt -- and rightly so, because he had identified him from the other case -- that he should take Luguizamon to court.

The other suspect, Diaz, Daly came over to me and said, "Joe, I'll flip you for him." I told Daly, I says, "Peter, I have arrests behind me. I have a little background in SIU. I have a wiretap to my credit. You haven't made any big collars yourself, although you have helped on it. It is yours."

Detective Daly, Detective Aguiluz went to night court with those two prisoners.

Q So Detective Daly took Diaz as his arrest and Aguiluz took Luguizamon as his arrest, is that correct?

A Yes, sir.

Q Now is it fair to say, Joseph, that each of

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them prepared the respective affidavits as required?

A In court, yes.

Q And is it fair to say that each of them ultimately testified in the grand jury?

MR. GIULIANI: Objection, whether it is fair to say or not.

THE COURT: Yes.

MR.GIULIANI: Only of his own knowledge.

Q Did Aguiluz go to the grand jury of New York County or the New York State Supreme Court Criminal Division?

MR. GIULIANI: The same objection. Did he go -- not whether Aguiluz did.

THE COURT: Well, if he knows. Is there any reason if he had personal knowledge?

MR. GIULIANI: Your Honor, I do not see how he can -- well, just to the fact that Aguiluz went -- not what he testified to.

THE COURT: I will permit it.

Do you know whether Aguiluz testified before the grand jury, of your own knowledge?

THE WITNESS: Yes, I know he testified, and I testified also.

THE COURT: All right, both of you testified.

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THE WITNESS: And Daly.

Q As a result of your testimony before the grand jury was Luguizamon indicted?

A Yes, I was.

Q Do you know whether or not Diaz -- is it? -- was he indicted?

A No, he wasn't. Prior to our conference in the grand jury --

MR. GIULIANI: Objection, your Honor. He has answered the question, "Was he indicted," and the answer is "No."

THE COURT: Well, he was about to tell us why he was not indicted.

A When we came with the New York City District Attorney --

THECOURT: No, is it the reason why --

THE WITNESS: Yes.

THE COURT: I do not think we need that. He was not indicted.

THE WITNESS: He was not indicted, correct.

THE COURT: Next question.

Q Luguizamon was indicted, wasn't he?

A Yes, he was.

Q And did there come a time when the Luguizamon

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case came on for trial?

A Yes, sir.

Q And did Carl Aguiluz testify?

A No, sir.

Q What happened? Tell the jury everything that happened.

A Detective Daly and myself and Aguiluz were present in New York State Court when the Luguizamon case was slated for trial. There was a date for trial. We all appeared. At this time Mr. Luguizamon pleaded guilty to a lesser charge, and that was the end of that case.

Q At this time did Luguizamon stand up and say, "Joseph Novoa stole money from me"?

A No.

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained.

Q Did Luguizamon make any complaints about you to anybody?

MR. GIULIANI: The same objection.

THE COURT: Overruled. To your knowledge, did he?

THE WITNESS: No, sir. I was never investigated for that.

Q Now, Joseph, did there come a time when you

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participated in the largest seizure of narcotics ever recorded in the history of New York?

A Yes, sir.

Q Would you tell the ladies and gentlemen of the jury everything, Joseph, everything about that case.

A April 15 in the early hours, perhaps at 12 o'clock, on April 14 we observed a white vehicle, a Ford, Florida license plates, in the vicinity of Seventh Avenue and 14th Street.

A female and male exited and went over to the window of a bar known as Oviedo.

Q What is that, Joseph?

A It's a Spanish bar-restaurant located on 14th Street, directly across the street from the Cafe Madrid.

They tapped on the window. A male came out. They had a brief conversation with him. The male went back into the restaurant.

The same two people went back to the vehicle.

Q Continue, please.

A They drove on Second Avenue to a delicatessen where two males now exited the vehicle, went into the delicatessen.

Q Could you describe these males roughly, Joseph?

A One was about 5-6, dark hair, and they had --

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they had light clothes on, light color -- just one did; and the other individual was a curly-haired type, gray, and he had very dark horn-rimmed glasses -- taller, maybe 5-10.

Q Continue, Joseph.

A They went into the delicatessen. I had been in Detective Aguiluz's car, and we followed them to the delicatessen. Daly was behind us in his car.

They went into the deli. I went into the deli alone. I was watching the individual with the horn-rimmed glasses. He was picking up some bread, and I walked over to the other individual who was at the cold-cut counter. The individual with horn-rimmed glasses had a loaf of bread in his hand and the shorter individual said, "Put the bread down" -- in Spanish -- "we have bread home."

After I heard this conversation I left the delicatessen and went over to Aguiluz who was still in the car and I said, "Carl, these guys are definitely going home or some place or other -- they are not going back to Florida because one guy said, 'Don't buy bread, we have bread home.'"

We decided --

Q What did Aguiluz say to you at this point?

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A He said, "Good, we will continue the tail."

We had two-way radios that the Police Department --

Q Explain that to the jury, please.

A These are Police Department radios. They are portable radios. They run on batteries. They are not installed as part of the car, like the radios you have -- they are small portable radios.

Q Something like a walkie-talkie, Joseph?

A Right, like a walkie-talkie. Aguiluz related on the radio, "We are going to continue the tail. They are probably going home. We do not know where it is."

The two individuals exited, got into the car. The four proceededwest through the Village until they finally go on to the West Side Highway -- I don't remember the exit -- down by the Trade Center somewhere.

Q In lower Manhattan; right?

A Correct. They got on to the West Side Highway and they are continuing on the West Side Highway in the direction of the George Washington Bridge, and we are still following them.

Q They came down from the Village into the area of the Trade Center, doubled around, back up into the West Side Highway, is that correct?

A Yes, sir.

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Q Heading up towards the George Washington Bridge?

A That is correct.

Q And you and --

A Aguiluz.

Q -- were tailing, and Pete Daly was your back-up man?

A Yes, sir. They went over the George Washington Bridge and we followed them over the George Washington Bridge. They exited at the very first turn, which is the Fort Lee exit of the George Washington Bridge, and we had to jump three or four lanes over to make that turn to continue the tail.

Q After you come off the bridge now.

A Right.

Q You are heading for the turn to the right, heading into Fort Lee, is it?

A Yes, Fort Lee.

Q All right.

A Because not to be in the tail we were driving in different lanes.

When they made this fast exit we had to work our way over, which isn't too easy on the George Washington Bridge,and get into this exit. The exit is a one-lane exit. When we turned and the people were in front of us,

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the males in the back were facing our direction, and I told Carl at this point, "They made us."

Q What do you mean by that, "They made us"?

A They now knew that they were being followed.

Carl said, "Well, we'll stay with them after coming this far. At least we will find out who they are," which I agreed.

I relayed this to Daly to try to become now the lead car because Carl's car had been burnt or made.

Daly came off the exit. So did we. So did the individuals. Daly took over the lead, to try to continue the tail.

They went up a two-lane street -- one lane in each direction. They pulled into a motel and they went behind the motel to what I assumed was a parking lot.

Q Do you know if that was the Tollgate Motel?

A Yes, it was.

We waited a few minutes and we decided they had no lights, and went into whatever room they belonged to.

We went into the motel, the same parking. As soon as we entered there, lights went on and they drove out of the motel. We decided, well, there is no doubt now that we have been made and we are not going to give up the tail until we identify at least who was driving that

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car. There was a series of U-turns, on this one-lane highway --

Q In other words, did they take evasive action?

A They are going in different directions and we are just following. We did not care now. This is a cat-and-mouse game, that we are not going to give up. At this time I believe it was an Englewood police radio car --

Q When you say "Englewood," is that near Fort Lee?

A Yes, they are right on the borderline there where all this motel and all this was going on -- stops the car and says, "What's with all the U-turns?"

We immediately identified ourselves to this police officer and say, "Look, you have stopped us. Will you please stop these people and get us the I.D. of the driver. We want to know who they are."

He says, "Sure."

He comes over -- they had stopped. He drives up to the woman and says to her -- she was the driver -- "Give me your license and registration."

We had gone with him. The woman answered in Spanish, "Why are you stopping me?"

At this time Aguiluz tells the police officer, "Look, I speak Spanish. Can I help you get the papers?"

He says, "Terrific, because I don't know what she

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is saying."

Q This is the Englewood police officer?

A The Englewood police officer.

Aguiluz tells her in Spanish, "Will you please produce your license and registration."

She goes into her purse and she starts going through some papers to produce a license and the registration. Approximately five minutes pass, and it is obvious she cannot find it. The police officer from Englewood tells us, "Well, you have three, four cars blocking the whole street here. Let's go down to the motel where it is light and maybe she will find the papers."

The caravan went down to the hotel -- the Englewood police car first, the suspects the second car, Aguiluz, and then Daly.

We all came into the motel, of that Tollgate Motel into the parking.

While Aguiluz is questioning this woman as to her papers with the Englewood police officer --

Q Is this in the parking lot?

A In the parking lot, the front parking lot, I walk over to the manager's office and I asked, "Would you look at these people? Do they have a room in this motel?"

He says, "I have no idea. I am the night man."

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I says, "Do you know their names?"

I says, "You have a lot of Spanish names. They are definitely Spanish."

He says, "I don't know, I will check the register."

He told me there were two Spanish names there, and he also told me, "I have no way of saying those are the people that are in these rooms."

I went back and determined from Aguiluz that she still hadn't produced -- she had produced, I believe, a license but there was a question as to the registration.

Aguiluz told me that she said, "The vehicle is rented from Florida. We just came from Florida off the Jersey Turnpike."

Aguiluz told me, "These people are lying, Joe. They don't even admit they were in Manhattan, so we weren't made in Manhattan. They only know us following them in New Jersey. They wouldn't even admit that I know we had just seen them in front of the Cafe Madrid. They are lying."

Q This is Aguiluz?

A This is Aguiluz telling me. I determined from her -- I turned around, and now the hotel manager says he has two Spanish names, he doesn't know -- he is a night man. Maybe these are the people that belong to the rooms.

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I went over to the hotel manager and I said, "Would you knock on the door to see if there is anybody in those rooms?"

Q These are the --

A The two rooms that he had Spanish names signed out for. I went with the manager --

Q Excuse me. Did the hotel manager object?

A No, sir.

Q That is, going to the hotel room?

A No, sir.

Q Did he at any time resist?

A No, sir.

MR. GIULIANI: Objection.

THE COURT: I will allow it.

Q Tell the jury what happened?

A The first room that he knocked on the door opened approximately two or three inches. A young male hispanic without a shirt on says "What do you want?"

The motel manager said "What is your name?"

He checks it. I don't know the name. Whatever is in the register.

"How long are you here?"

This young male says "I just got in here tonight. I'm leaving tomorrow morning," and closed the door.

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Q What happened next?

A We went to the second door. The hotel manager knocked on the door.

Q This is the second possible suspected room; is that correct?

A Yes, sir. That was listed to a Spanish name. He knocked on the door. There was no answer. He says to me "I have the pass key. Do you want to open the door?"

I says, "Well, it is your hotel."

He says, "Well, I'll open the door."

He says, you know,"I'll do that."

He opened the door and put on the light. As soon as the room became lit he turned to me and said, "This room doesn't belong to anybody. It is shaped for rental. It should never have been on the registered list."

So I asked him, "What do you mean 'shaped for rental'?"

He says, "Well, there is the band on the toilet seat and the glasses are in the papers. Nobody" -- he says, "This room has been cleaned up. They made a mistake and didn't cross it off the book. It is ready for rental."

We closed the door and went back to Aguiluz and the Englewood police officer.

Q Did you report this conversation?

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A I related this to Aguiluz and to Daly. At this time there were other uniformed police officers and I was told that we were now in Fort Lee in this motel and where we were stopped was Englewood. A sergeant asked me what we were doing and what was going on and what our authority was there. We told him we were New York City detectives and we told him we saw these people in Manhattan. We tailed them here. We explained all the funny moves they made and all we did after we got stopped was ask this New Jersey police officer, you know, "Please find out who they are. A language problem ensued and all we have been doing is trying to find out her registration of the vehicle. The Englewood police officer left.

Now, the Fort Lee sergeant says, "Well, what do you want me to do? I didn't even see her driving the car." So I said to him, "Well, can you take her in? Can we work on the car? Maybe the car is stolen. We will lock her up. We saw her driving the car in Manhattan. Why don't we take her back to Manhattan? Let me talk to Carl and let me explain to these people that if they don't come back with us to Manhattan they are going to be arrested in New Jersey."

He had that conversation that I heard him say the same thing that I asked him.

She said, "Who are the guys, you and the other

guy" --

Q Who is this talking now?

A The woman says to him "We want to stay with either you or the other guy that speaks Spanish. All these guys in uniform don't speak Spanish. They don't understand. We are tourists."

Still with this ruse: "We don't understand why we are being stopped. You are the only people that can understand."

And Carl kept telling her"If you can find the registration there is no problem."

Q At this point had this woman proved or shown any registration or indicia of ownership or authorization?

A Not papers for ownership. I am pretty sure she produced a license but no ownership.

Q And not a registration?

A No, sir. During this time in the parking lot of the motel she opened the trunk of her vehicle. She went into the suitcase in an attempt to find this contract, the contract that she contended the vehicle was rented for.

Q She claimed she had rented the vehicle in Florida?

A Yes, and that was the piece of paper, the registration. We never saw the piece of paper.

At this time I told the sergeant, "My name is

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Detective Joseph Novoa," and the shield number, the office that I work in, the office telephone number.

"If you don't want to take these people back to investigate this car we are going to take them back to Manhattan because"-- we were at a standstill. At least an hour and a half had transpired. We weren't going any place.

At this Aguiluz said to me, "Look, Joe, she'd rather stay with us. They are willing to come back to Manhattan."

I related this to the sergeant from Fort Lee. I told the sergeant. The sergeant said, you know, "I hope you guys know what you are doing."

I said, "Sergeant, there is nobody under arrest. I am not going in there with agun. There is nobody handcuffed. She is going to drive the car and I am going to sit in the front seat."

He says, "If that is the way you are leaving, goodnight."

Q Then what happened, Joseph?

A We came back to Manhattan. We got off at 18th Street from the West Side Highway. There were a series of conversations between the suspects to the female that was the driver, "Make a left here, make a right there, make a left here," until it became obvious we were going in a circle.

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Q You said, Joseph, the woman is still driving?

A Yes, sir.

Q And these two suspects, the ones that you had said you had seen turn around in the car so that they had observed the tail were instructing her to turn here and turn there; is that correct?

A That is correct.

Q Did there come a time when you got the impression or someone got the impression that it was aimless driving around?

A Yes, sir.

Q Tell the jury what happened after that; who said what to whom and what you did?

A At this point we had wound up exactly where we started, in front of the delicatessen on Grove and 7th. Aguiluz said, "That is it, Joe, we are going to the 6th. We will bust the engine, take apart the vehicle and find the engine number and find out who in fact owns the car."

Q Where is the 6th Princinct located, Joseph?

A In the West Village on Charles Street, I believe. He exited the car.

Q When you say "he," who do you mean?

A Carl exited the car at this time. I had been seated in the front seat. Carl was seated in the rear

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seat right behind me. Daly followed in his car and Carl's car in fact was left in New Jersey.

Carl told Daly, "We are going into the 6th."

Carl comes back to the car and tells the first individual that is next to him, "Give me all your papers."

At this time Carl gets the papers. I go to reach for the woman's bag where she had been digging through and underneath the front seat of that car I recovered a gun. I recovered it.

Q All right, Joseph, tell us what happened next.

A I told Carl, "Watch yourself, I have a gun."

He tells me, "Joe, this guy just gave me three passports."

I put the gun --

Q Would you explain the significance of that, Joseph, three passports?

A Anybody in narcotics would arrest anybody or detain them for federal authorites that had three passports, so when Aguiluz told me he had three passports, Aguiluz is telling me "That gun is nothing. This guy got three passports."

Q Go ahead, Joseph, continue and tell the jury everything that happened.

A We go to the 6th Precinct. We put all -- we searched everybody now. The gun in question never left

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my pocket. The gun wasn't put on the table. It was in my pocket. We emptied every piece of paper that they had in their possession and put it on the table. As we were doing it we were indicating each pile of paper belonging to each defendant, because now they are all under arrest for the charge of possession of a gun in an auto.

Q This is all under the New York State Penal Law?

A Yes.

Q Continue, please.

A I was looking through these papers and Carl was looking through them and he was very interested in the passports.

In fact, he was recognizing names from the McAlpin case. There was a lot of conversation about all the materials in front of us. I told Carl, "They have an apartment on 19th Street. There is rent receipts here."

He says, "I saw them already."

Q Pardon me?

A He said, "I saw them already."

At this time the individual who became known as Gonzalez started making the complaint that somebody stole his hundred dollars, $100 was stolen, he said. He was taken from a cell and brought over to his personal property

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because he contended that the $100 was in fact in one of the passports.

Q Did he make any accusations as to whom he alleged stole the money?

A No, sir, he was in ferring that we were going to take the 100 or a hundred was probably gone from those passports.

Aguiluz became very indignant and took the guy out of the cell and said, "Let's look through those passports. Show me where the hundred dollars was supposed to be."

It was a ruse. At this time he jumps on all the papers and starts stuffing papers in his throat, Gonzales. I grabbed Gonzales behind the neck. We wrestled to the floor. Pete Daly helped me on the floor. We tried to recover what he was swallowing. We didn't.

Q Incidentally, did Peter Daly kick this man in the throat?

A No, sir.

Q Did anyone hit this man?

A Yes,sir, I had hit him earlier.

Q We will get back to that later.

In the precinct, tell the jury if anybody hit him.

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A Hit him only in trying to restrain him and trying to get his throat where he was swallowing the papers. Nobody kicked them. Nobody was trying to punch him around. We were just trying to recover the papers.

Q While we are on the subject, Joseph, of punching, did anything else happen between you and Gonzales in Fort Lee, New Jersey?

A After I came back from looking at the rooms with the manager all the male suspects and the female had been seated in the car during this finding of the registration. While I was talking to Aguiluz the woman exited the vehicle to tell Aguiluz that she had to go to the bathroom or she had -- she had to go to the bathroom, if what I can remember.

At this time Gonzales is opening the front door. I put my hand on the door and I tell him in Spanish, "Sit down."

He slammed the door open and it crashes in my knees and my shins and I punched him right in the mouth and made him sit down in the car.

Q All right, Joe.

This is the same Gonzales who is now in Manhattan in the 6th Precinct who has made the accusation as a ruse that someone has stolen his hundred dollars and he goes to

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the desk, the sergeant's desk and he starts scooping up some of the papers and stuffing them in his mouth; is that correct?

A Yes.

Q And then when all three of you, Daly, Aguiluz and yourself tried to wrestle him down to the ground and retrieve the papers he was stuffing in his mouth?

A Yes, that's correct.

Q Were they retrieved?

A Pieces were retrieved. The entire papers wasn't. Both Aguiluz and I knew in fact that he in fact was trying in fact to destroy the rent receipts that we had seen.

Q What happened next?

A We didn't say anything. We put him back in the cell at this time and we handcuffed the woman to a chair.

Q She was outside the bullpen?

A She was outside the bullpen that the males were in. I went in to the squad room and I told Aguiluz -- Aguiluz confirmed, in fact, the rent receipts were from an apartment at 210 West 19th Street, Apartment 4-F.

Q There was the rent receipts that he had tried to or had successfully destroyed; is that correct?

A Yes. He says to me, "Joe, we got to get over to the apartment."

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Q Who said that?

A Carl says to me, "We got to get over to the apartment, Joe. There has to be big things."

I said, "Okay, Carl, I am going to lock them up for the gun. I am going to arrest them for the gun. You and Daly leave and just go out and see if the building exists, see the super, see if by description they did know them in fact in the building. Go out and find out what you can about the building."

Q About what time in the morning did this occur?

A This occurred about close to 5 o'clock in the morning. We came into the precinct about 4 o'clock in the morning and it took about an hour.

MR. COSTELLO: Excuse me just a moment. Mr. Giuliani, did you find Mr. Novoa's notebook, the UF 16 that I returned to you?

MR. GIULIANI: I am not sure he returned it to me. I looked for it before. I don't have it.

MR. COSTELLO: I did return it.

THE COURT: He doesn't have it. It was made available to you according to your statement. Let's go on.

MR. COSTELLO: All right.

Q You are now in the precinct and you are processing them on the gun charge; is that correct?

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A Yes.

Q Tell the ladies and gentlemen of the jury what this administrative procedure requires, please.

A Each individual has to be fingerprinted three times, one for the city, one for the state and one for the federal government. That is 12 forms that have to be typed because you can't handwrite them because the machinery they are processed in, they must be typed. I typed them with my two fingers and I continued the rest of the early morning hours processing these four individuals. I received a phone call from Daly about 10 o'clock, 10:30. He said, "Joe, Carl is meeting with Mike Santa Cruz. They are getting a search warrant. We are going to hit this flat. Carl called Lieutenant Egan. We calld Stefania. We are going to get somebody down to the precinct to watch the prisoners. We want you here."

Q Before that had Carl Aguiluz called and telephoned you and had a conversation with you relative to the locked closet?

A Carl Aguiluz called me on the telephone. Carl Aguiluz told me, "Can you call your friend John Kid? We are having a problem." That is what Carl Aguiluz told me on the telephone.

Q Continue, please.

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A I knew John Kid to be a locksmith. I knew that they needed him there to pick a lock. He wasn't assigned to narcotics. That is all he does, John Kid, is pick locks. I called John Kid at his house and I asked him to meet Daly and Aguiluz -- I described them to him -- right on 19th Street and Seventh Avenue. "Meet them there, they need you."

John Kid said "I'll get there as soon as I can."

Q Where was John Kid living at that time?

A Up in Co-Op City in the Bronx.

Q Continue, please.

A The next information that I received was from a patrolman who was assigned as a clerical man to SIU. I believe his name was Bernie McMann. He told me Lieutenant Egan left a message for the first guy that comes into the office to respond to the 6th Precinct: "Relieve Joe Novoa from guarding four prisoners and Joe Novoa knows where he has to go."

About 11 o'clock or so Bernie McMann came in to the 6th Precinct. He says, "Joe, this is the message. I hope you know what it means. I'm supposed to take care of the prisoners and you are supposed to know where you go."

I left the 6th Precinct. I went to the building 210 West 19th Street.

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Q When you got to the building at 210 West 19th Street did you go to Apartment 4-F?

A Yes, sir.

Q When you got to Apartment 4-F, tell the ladies and gentlemen of the jury everything that happened. Who was there?

A To get into the building I had to ring the bell at 4-F. Pete Daly came down and answered the door and told me, "I'm not going to say anything, Joe," he says, "you are not going to believe what you are going to see upstairs."

We took the elevator. We had no conversation. When we got to the apartment Carl Aguiluz was there, Lieutenant Egan was there. I don't think Sergeant Stefania had gotten there at that time. I think he arrived a little bit later. And, naturally, Kid was there.

Q That is the first time you are getting to the apartment; is that correct, Joseph?

A Yes, sir. What you see in that picture, with all these police officers --

MR. COSTELLO: May I see that picture, please?

A -- is exactly the way I saw that dope laid out. It wasn't in the closet. It was just on the floor almost in the exact position where you see that dope when I walked into the apartment.

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Q Joseph, for the record, can you enumerate all those you know who were there at that point? Point them out to the jury, please. Tell them about it.

A Starting at the left is Detective McDermott, locksmith picker. This is Johnny Kid, who testified here. This is Sergeant Stefania. He is now Lieutenant Stefania. He testified here. This is Inspector Holtzman who is no longer in narcotics. I don't know if he is still in the Police Department. This is Inspector Palmer who is also in narcotics at the time. I don't know if he is still a member of the Police Department. This is Peter Daly. This man here is Chief McCahey, the boss of all the narcotics division. This man here is Captain O'Brien, the captain that I really worked for. Tange, as I said earlier, had been transferred. This is Detective Charles Worster. This is Detective Aguiluz who has testified here. This is Lieutenant John Egan and this is myself.

Q Did there come a time, Joseph, when the federal authorities came in and took their bows?

MR. GIULIANI: Objection, your Honor. I don't know what that means.

THE COURT: Sustained, argumentative.

Q Did there come a time when representatives of the federal government and the U.S. Attorney's Office came

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to the place, if you remember?

A At the apartment, I don't remember meeting any agents. After we left the apartment and went to the 6th Precinct I met agents from the federal government.

Q But all the people who participated directly or indirectly in this huge seizure that appears in that picture are all New York City police officers?

A Just the New York City Police made that arrest.

Q It was the New York City police who made that arrest?

A That is right.

Q Who made the confiscation of that narcotics; is that correct?

A That is correct.

Q Now, did there come a time when the federal agents came in on it?

A Later, after that picture was taken we were all at the 6th Precinct.

Q You were back at the 6th where thepeople are arrested?

A Where the people are.

Q Continue, Joseph.

A Detective Aguiluz told me that it would be a good idea if charge No. 1, the gun charge, my charge, would be

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changed to charge No. 2 because now he had in fact secured a search warrant against these people for the drugs. We had a discussion about the inconvenience it would be if, in fact, we took these people to Court and arrainged them just for the gun and then when the Judge set bail or whatever he set, we physically would have to take them back and go through the same processing again fo the drugs.

So it was determined that we would change the charge No. 1 to a drug charge and No. 2 the gun charge.

THE COURT: Suppose we stop here for our morning recess.

Madam Foreman and ladies and gentlemen of the jury: Suppose we rest for a few minutes. You may retire to the jury room.

(Jury left the courtroom.)

MR.COSTELLO: May the witness step down?

THE COURT: Of course. Suppose we take a few minutes recess now.

(Recess.)

THE COURT: All right, bring in the jury.

(Jury present.)

THE COURT: All right, shall we continue, please.

MR. COSTELLO: Yes. may I have the last question and answer re-read, your Honor?

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THE COURT: Yes.

(Record read.)

Q Was that in fact done, Joseph?

A Yes, sir.

Q Did there come a time when the suspects were brought to night court; and booked or arraigned?

A Yes,sir.

Q Would you tell the ladies and gentlemen of the jury everything that happened at the arraignment, what bail was set, everything that occurred as you remember?

A Detective Aguiluz, Daly, myself, Sergeant Stefania and Lieutenant Egan went to night court and were present in the building for the arraignment. Detective Aguiluz had been in conference, I believe, with District Attorney Fitzergerald in the Manhattan DA's office drawing up the affidavit. When he camedown he told --

Q This is Aguiluz?

A Aguiluz told us that Mr. Fitzgerald had drawn up the affidavit in such a manner that only Aguiluz would have to swear to the affiavit and at a later time Daly and myself would testify to the facts that we knew in the grand jury.

Q At this point, Joseph, did there come a time when an attorney appeared to represent one or all of these defendants, to the best of your recollection? Did an

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arraignment take place that night?

A Yes,sir, I believe the attorney that showed up was one Michael Santangelo.

Q Had Michael Santangelo ever been your personal attorney?

A No, he had not.

Q Had Michael Santangelo ever represented either you or your wife or any member of your family?

A No, sir.

Q When Mr. Santangelo appeared in Court he appeared for the defendants you had arrested; is that correct?

A That is correct.

Q Was bail set by the judge?

A Yes, sir.

Q Would you tell the jury how much bail was set for the respective defendants as best you can recall?

A To the best of my recollection each defendant was held in $100,000 bail.

Q And there were four defendants; is that correct, Joseph?

A That is correct.

Q They were each held, to the best of your recollection, in $100,000 bail respectively?

A Yes, sir.

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Q After this did they make bail at that time?

A No, they did not.

Q After this arraignment they were thenbrought to the House of Detentionin the woman's case and the others were brought to the Tombs;; is that correct?

A That is correct.

Q Did you have any further dealings with these defendants?

A Well, we went the next day, I believe to this District Attorney's office, Mr. Fitzgerald.

Q Are you talking about the Assistant District Attorney Fitzgerald in Frank Hogan's office at Leonard Street in Manhattan?

A We had conversations with him. He wanted to know exactly how the arrest came about, when did we first see them, all the facts. We related them to him. We told him about New Jersey. I told him that I had punched a guy in the mouth in New Jersey. I also told him that afterwards I apologized to the guy.

And he said, "Well, why didn't you lock himup in New Jersey? "

I says, "Well, nobody wanted to arrest him. The sergeants there didn't want to investigate thecar. The cop who had seen the woman driving now went back to

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Englewood. The Fort Lee police took the position that "The car, as far aswe are concerned, is parked here. If you want to go back to Manhattan you take them back to Manhattan."

Q All right.

Was it on this occasion, Joseph, that Mr. Seeley came into the Manhattan District Attorney's office?

A Not during this conversation. At a later one.

Q At a later date.

Did there come a time, Joseph, when you learned that one of the prisoners had made bail?

A Yes.

Q Will you tell the ladies and gentlemen of the jury what you learned?

A I learned that the prisoner that we booked as Elena Deriso had in fact posted $100,000 bail in the form of a money order that was placed on her card that is made up for each defendant in the jail and she walked out of that jail with the attorney that represented her.

A Joseph, backstepping for a moment, you told the ladies and gentlemen of the jury about the arraignment, the bail being set by the state court judge and your meet-int the next day with Mr Fitzerlad. Between your meeting the following day with Mr. Fitzerald and the day this

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woman jumped bail after posting $100,000, did you have any further conversation with anyone relative to the case?

A A few days after the arrest an arraignment of these individuals a detective knwon to me as Nickie Lamattina came over to me and Daly and told us we were in big trouble.

Q Tell the jury all about Nickie Lamattina.

Nickie Lamattina, he was the one who flunked the lie detector test, is that right?

A Correct.

Q Tell the ladies and gentlemen of the jury of your conversation with Lamattina.

A Mr. Lamattina came over to us and said, "Pete, you and your friend Joe are in big trouble because Mike Santangelo found out about New Jersey."

Q What did you say to him?

A I told Lamattina -- this is the first time I had spoken to him -- I says, "I don't know who you are, but if you have any information you want to come wtih me to meet Mr. Fitzgerald, the District Attorney who is handling this or if you don't trust me or Mr. Fitzerald, doyou know who Mr. Scotty is?

At this time he told Pete, "What is the matter with this guy? I'm trying to help you out."

I told Pete, "Tell your friend help himself out

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and go to the District Attorney's office with any information that you have about this hundred kilo case."

Q Joseph, you told the ladies and gentlemen of the jury you referred Mr. Lamattina to Mr. Scotty. Was Mr. Scotty at that time Frank Hogan's right-hand man in the D.A.'s office?

A It was my impression that Mr. Scotty was in charge of all corruption in the County of Manhattan involving police officers or any other public officials.

Q Had you ever had lunch or a drink with Mr. Lamattina?

A No, sir.

Q Had you ever engaged in any arrangement with him or promise to fix any case with him?

A Never.

Q Had you ever received a dollar, a penny, a quarter or any amount of money from Lamattina?

A Never.

Q After you told Lamattina if he objected to the arrest you had made to go to Mr. Scotty's office, what did he say or do?

A He left. The conversation terminated and he left.

Q Did you ever meet Lamattina on South Street or

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any area of lower Manhattan, Wall Street or any other section of New York and take $5,000 from him?

A I never took $5,000 from him, but this conversation took place on South Street and I remember one other.

Q Tell us the conversation that took place on South Street. Tell the jury everything.

A About some time in May, I think it was, maybe the third week in May, Mr. Lamattina came over to us. Again, I think Aguiluz was there at this time, Aguiluz, Daly and myself.

He said, "Look, I'm telling you something for your own good. Mike Santangelo and John Seeley from Customs are building a case against you, Daly and Aguiluz. They got the whole story about New Jersey. Seeley took the defendant Gonzales out of jail with Santangelo to build a case against you three guys for making the 100 kilo arrest."

I told Mr. Lamattina, "Get Mike Santangelo and Mr. Seeley and tell them what I told you."

That was the last conversation that I had with Nickie Lamattina.

Q Now, Joseph, what happened after in regards to this case? Was there any further transactions, any further conversations relating to this case?

A After Deriso posted bail and failed to make court

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appearances, it was determined that she had fled.

Q Deriso is the name of the woman who had posted $100,000?

A Yes, sir. We were called, Detective Agauiluz, Daly and myself, to the offices of Mr. Fitzgerald, who was the District Attorney prosecuting the case. Present in the office when we arrived there was John Seeley, who testified here yesterday, and another agent, I believe by the name of Rainey.

Q Tell the jury who said what to whom. This conversation is in Frank Hogan's office at 60 Leonard Street?

A It was in Mr. Fitzerald's office in the D.A.'s building.

Q All right,continue, please.

Q After we introduced ourselves Mr. Seeley started to tell Mr. Fitzgerald about the lack of cooperation his agency was having with specifically the members of the SIU; that in fact he had built cases against the persons arrested in the McAlpin and that if they -- if the members of the SIU on that case had helped Mr. Seeley, perhaps they wouldn't have fled on their $20,000 bail respectively, which in fact they did flee on.

Mr. Seeley indicated we could have had holds

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placed on them if we had built a case on them and when they were let out on that bail they would have to face a federal bail.

This conversation was going on for about 15 minutes in the area of the McAlpin case. I didn't say anything at that time because I never worked on the McAlpin case.

Q Mr. Seeley did most of the talking?

A To Mr. Fitzgerald.

Q Seeley to Fitzgerald.

A He started talking about the 100 kilo case, Seeley, what a disgrace it was that this woman was no longer under anybody's jurisdiction, especially since he in fact on his own had compiled a passport case against her and Gonzales and in fact Gonzales made a hundred thousand dollars bail similarly, the way Deriso did, but Customs was there to detain him on this case he had made against him.

He started to cite in numbers of all the individuals that were posting bail and escaping jurisdiction.

At this time I told Mr. Seeley, I said, "Just a moment. Unless you are not aware of it -- I don't know where you come from -- if you are from New York, bail is not the obligation of the New York City Police Department. Bail is established by judges on the recommendation of the District Attorney. Prior to

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Deriso escaping on $100,000 bail nobody ever beat or posted that kind of bail and ran away to my knowledge.

"Mr. Fitzgerald set a tremendous bail to insure her being detained to face these charges. Nobody in all the intelligence of all the federal agencies said the South American dealer is organized similar to the Mafia when they can in fact this kind of money. All the Intelligence at that time from the federal agencies was that these South Americans were couriers not organized criminals, and when Mr. Fitzgerald post $100,000 he didn't believe that they were going to escape and neither did anybody in that team of me, Aguiluz and Daly."

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Q You mean when Mr. Santangelo posted the bail?

A Posted the bail.

Q Not Mr. Fitzgerald?

A Well, when he requested that amount of bail. Not knowing this -- not to my knowledge, Mr. Fitzgerald stated --

MR. GIULIANI: Objection, your Honor, if it is not to his knowledge.

A -- what he stated --

THE COURT: I understand you are telling us what Mr. Fitzgerald said at a meeting where you and Mr. Seeley were present.

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead.

A Mr. Fitzgerald told Mr. Seeley "I personally placed a letter to advise you in the event that they should make the bail, notify me personally so that I can call the Federal agencies to see if in fact they had built a case" -- because the day that we were there after the arrest we told Mr. Fitzgerald about federal agents coming down on the arrest and that I in fact turned over their passports to the agents.

Q That was the day of the arrest?

A Yes, sir.

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Q Continue, please.

A These are the same passports that Seeley built the case against Gonzales. They came from us.

Q The New York City Police Department, you, Detective Joseph Novoa --

A Correct.

Q -- right, sir.

Continue and tell the jury all about it.

THE COURT: No, that is not a proper question, "Tell the jury everything" -- that is not a proper question to ask.

MR. COSTELLO: Very well.

THE COURT: Can't we proceed by normal questioning?

Q Very well. Continueyour story.

THE COURT: No. What is it you want him to tell.

MR.COSTELLO: I want him to tell everything that happened in this office, all of the conversation.

THE COURT: The conversation between Fitzgerald, Seeley and the witness.

MR. COSTELLO: Yes, sir.

THE COURT: All right. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

A When I started to tell Mr. Seeley about not

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knowing who hewas and trying to explain the bail system, he told me "Listen, you, don't you bullshit a bullshitter. I was a New York City policeman. I know what's going on".

At that time I got up and I told Mr. Seeley "If you don't want to get knocked on your ass you had better walk across that hall to the grand jury and put in whatever evidence you have that I did wrong on this case, because I'm not going to sit here and listen to you infer that I did something wrong".

Mr. Fitzgerald said "What are we doing? We are supposed to be here together to work things out."

I said, "How can you work out things when somebody comes in and infers that something is wrong?"

After this conversation is when Santangelo and Lamattina told me "Seeley is going to get you."

THE COURT: Wait. Do we have the end of the conversation between you, Seeley and Fitzgerald?

THE WITNESS: Yes, sir, but --

THE COURT: All right; ask another question.

Q Now Joseph, control yourself.

Does this conclude the conversation? Did Mr. Seeley say anything else? Did Mr. Fitzgerald say anything else? If so, please tell us who said what to whom.

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A After I challenged Seeley he wrapped up his notes and left.

Q And did that --

A Thatwas the end of the conversation with Mr. Seeley.

We had further conversations with Mr. Fitzgerald who told me "That is the not the way to conduct yourself. Why are you taking this thing personally?"

I said, "The only reason I took personally isbecause I was under the impression all the time that he was talking that he was an agent up from the midwest, somebody who wasn't aware, but when he told me that he was a former police officer and in fact was inferring that we were setting up this bail business so that these clowns could escape, I can't control myself after that".

So Mr. Fitzgerald advised me, "In the future,if there is any other meetings or any other meeting you will have to learn to control yourself because I am sure Mr. Seeley now knows he is not going to make any statements to that effect."

Q All right, Joseph.

What was the next conversation or incident relating to this case, Joseph?

A A few days later Mr. Santangelo and Mr. Lamattina

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told me in fact that Santangelo had been in Jersey, that "The people in Jersey had told the whole story, that in fact the same thing that happened to you cops coming in and challenging you who you are, happened to them with Mr. Seeley."

Santangelo --

Q Who told you this?

A Mike Santangelo.

Q The attorney?

A The attorney.

MR. GIULIANI: Where did this meeting take place with Mr. Santangelo and the witness and Mr. Lamattina?

THE COURT: Yes, where was this?

THE WITNESS: This was in the Criminal Court Building, at 100 Centre Street, and to the best of my recollection it was a date that I was scheduled to appear in court on this case.

Q Now will you tell the jury what Santangelo said to you and what you said to him. Tell us the entire conversation.

A Mike Santangelo told me"Seeley is going to get you. He found out the truth in Jersey, that you kidnapped these people in New Jersey, that the drugs were in New Jersey and that you flaked these people."

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Q This is Santangelo?

A Santangelo, and I told him and I told Lamattina "If you have any information that those drugs came from the couple, if you have any information that I put a gun to anybody's house and forced him over that Washington Bridge back to Manhattan, this is the D.A. that wants to know, Mr. Fitzgerald, and if you don't trust him go see Mr. Scotti."

Q What did Santangelo say then, Joseph?

A The conversation terminated, and that is the last time that they approached us with any threats in that case -- they approached me in any threats to me in that case.

Q All right. Did Peter Daly ever tell you if anybody approached him and threatened him after you spoke to Santangelo?

A No, he did not.

Q All right. Is there anything else that you can tell us about this case following the last conversation referred to?

A With these conversations with Mr. Fitzgerald, he decided --

MR. GIULIANI: Objection, your Honor.

Q Just tell us what Mr. Fitzgerald said to you.

THE COURT: What do you want him to tell you?

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MR. GIULIANI: What kind of question is that? Is there anything else to tell?

THE COURT: Well, you did not object to the question.

MR. GIULIANI: I am objecting to the question.

THE COURT: Well, it is a very, very late objection.

MR. GIULIANI: I am sorry.

THE COURT: The witness started to answer the question.

MR.GIULIANI: Your Honor, he asked "What else can you remember about it".

THE COURT: Of course it is an improper question, but since you did not object I permitted it.

All right, I will sustain the objection. It is not a proper question, "What can you tell us about this case". That is not a proper question for a lawyer to ask.

Let us go ahead.

Q Joseph, is there any further conversation with Mr. Fitzgerald relative to the seizure of 100 kilos by the New York City Police Department?

A There were many conversations with Mr. Fitzgerald in preparing the case. There was one conversation, I recall where he felt as a prosecutor he could never build the case against two of the suspects, therefore he wasn't

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moving to have them indicted.

We went into the grand jury. Of course we sat down with him before we went into the grand jury and went over the testimony and the facts. We did, in fact, Daly and myself and Aguiluz, testify in the grand jury.

They subsequently were indicted, the two individuals, Gonzales and Deriso. I told -- I told Mr. Fitzgerald that we had information that people were going to come to him with stories about kidnapping in New Jersey, about me punching the guy in New Jersey, about us finding the dope in the motel rooms and putting it in the trunk of our cars and then breaking into 19th Street and putting the dope in there and saying that the dope was there.

I apprised Mr. Fitzgerald of all these things.

He told me, "How could these stories get started? Even other members of SIU have come up to me and said 'This case is nothing but trouble, nothing but trouble,' and we have heard the bad things about the case".

So I told this to Mr. Fitzgerald, "Obviously people aren't aware that from the outside, where they tell you that we went to New Jersey".

So he says, "Whoever doesn't know it and doesn't

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believe it, let them come here with any information -- just do whatyou have been doing. Whoever wants an inquiry into this case refer them to me".

Q Joseph, did there come a time when the New York City Police Department brought you up on charges relative to your leaving the State of New York while on duty as a New York City police officer and going to the State of New Jersey?

A The charges -- I was brought on charges. The original charges were against me.

Q Will you tell the jury what the charges were?

A Were illegal search of persons, and illegal search of an automobile.

Q Did you appear at this hearing before your peers in the Police Department, take the stand and testify?

A I testified prior to the charges, to other interviews by the Police Department.

Q Those interviews conducted by your superior officers in the Police Department, is that correct?

A All my direct superiors, and also all members of the Internal Affairs Unit of the Police Department.

I also testified before the State Investigation Committee.

Q Is this the one that Nadjari was in?

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A No, that was headed by Paul Curran.

Q Who is now the United States Attorney in this district?

A Yes, sir.

I was questioned by the Knapp Commission over this case.

After all of these things I was always told "You did a fine job. Perhaps you could have legally put the case -- put it together better but we all realize it is easier to be a Monday morning quarterback and you don't have an attorney with you when you are putting this case together".

That is what all these attorneys from the SIC, the Knapp Commission were telling me -- it is "It is too bad you guys did not have an attorney when you were putting this case together."

That was the only criticism -- and one other criticism from the Knapp Commission--

THE COURT: Wait. What does this have to do with this case? Not a thing in the world. Let's stop that.

Q Joseph, now getting to the case on trial and the government's witnesses, do you remember a Salvador Boutureira testifying?

A Yes, sir.

Q Do you remember Salvador Boutureira testifying

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to the fact that Carl Aguiluz brought a duffel bag to his apartment containing 5 kilos of heroin and cocaine? Do you remember that testimony, officer?

A Yes, I did.

Q Did you have any knowledge at that time or any other time that Carlos Aguiluz and his brother-in-law Boutureira were stealing drugs?

A I became aware of that on the day that I was arrested and indicted on March 8th.

Q So is it fair to say you learned that your partner, Carl Aguiluz, had been betraying you and Peter Daly only on March 18, 1974 this year; is that correct?

A That is correct.

Q Did you ever have a conversation in the Club Espana with Peter Daly, wity Carlos Aguiluz or anybody else relating to the sale and the distribution of narcotics?

A I never had any conversations like that with anybody.

Q Did you steal 5 kilograms or 5 kilos of narcotics from 19th Street or any other place?

A I never stole narcotics in my life, any amount.

Q Did you ever take a grain, a gram, a single, solitary infinitesimal grain of narcotics?

A Never.

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Q Did you ever shake down, extract, confiscate or convert to your own use any sum of money from a citizen or person?

A I never stole any money from anybody.

Q Did you hear Carlos Aguiluz testify regarding, in substance, the suitcase filled with narcotics which you are alleged to have said "Throw it in the river"?

A I heard that testimony, yes.

Q Was there ever any conversation about the throwing of narcotics or anything in the river?

A That conversation was a lie. It never happened.

MR. FELD: Objection, your Honor.

THE COURT: Yes. Don't characterize the testimony of other witnesses as a "lie". You can state that it did not happen, and I understand that is what you say, the conversation did not happen.

THE WITNESS: Yes, sir, did not happen.

Q It never happened?

A It never happened, that is correct.

Q Did you hear testimony by other government witnesses regarding the man on a motorcycle and a black leather jacket going down, picking up a kilo of narcotics, taking a paper, whirl it around and throw it into a taxicab? Do you remember that?

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MR. GIULIANI: Objection to the form of the question.

THE COURT: Well, I will have to sustain the objection to form. I can't remember the testimony.

Q Well, Joseph, do you remember the government offering witnesses, testifying as to a motorcyclist in a black jacket picking up a kilo of narcotics?

A I remember the testimony, yes.

Q Do you remember Carlos Aguiluz saying that you and Peter Daly and he was standing in the lobby of an apartment house or some other building and watching this transaction? Do you remember that?

A I remember him saying that, yes.

Q Did any such event ever occur?

A That never ever happened, ever.

Q Do you remember another one of the government witnesses testifying as to the going -- I think it was Carllos Aguiluz' brother-in-law going -- testifying that you and Peter Daly went to the Hotel Taft, at which time a certain sum of money, substantial sum of money was placed on a bed and distributed? Do you remember that conversation?

A I remember the testimony.

Q Did you ever go to the Hotel Taft with this Boutureira, Salvador Boutureira?

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A Never went to the Hotel Taft with Boutureira.

Q Did you ever get a dollar bill or a coin from Boutureira?

A He never gave me any money.

Q Did you ever have any business transactions, legal or otherwise, with Boutureira?

A I had dinner with him.

Q No, I am talking about business.

A No, no business. I didn't know if you meant social.

Q No. That was with Carlos Aguiluz, is that correct?

A And Pete Daly, yes.

Q And also -- incidentally, who is Marcos Herraras?

A Marcos Herraras was identified by a Custom Agent to me as a paid informant for the federal government of narcotics.

Q Was the federal government through Marcos Herraras or any other of their informants supplying and assisting you as a New York City police officer in the apprehension and detection of those dealing and trafficking in arcotics?

MR. GIULIANI: Objection, your Honor.

THE COURT: What is the ground of the objection?

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MR. GIULIANI: What is the relevance of the question, your Honor? It is absolutely irrelevant.

THE COURT: Well, is there any testimony on the government's case about Marcos Herraras?

MR. GIULIANI: No, your Honor.

MR. COSTELLO: Oh, yes, there was. I think Mr. Schwartz brought it out.

THE COURT: I can't remember. What is the evidence about Marcos Herraras?

MR. COSTELLO: That Marcos Herraras is a government informant.

MR. GIULIANI: It has absolutely -- he isn't named as a co-conspirator in this case. There are millions of government informants.

THE COURT: Wait a minute.

Mr. Costello, was it part of the government's case?

MR. COSTELLO: Yes, your Honor.

THE COURT: All right, what is the evidence?

MR. COSTELLO: I believe it was -- yes, your Honor, I believe so.

THE COURT: That the government brought out that they were using Marcos Herraras?

MR. GIULIANI: That is not true. The government

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never brought that out.

MR. COSTELLO: I believe it was Mr. Schwartz -- maybe Mr. Stone -- one of those two gentlemen brought out about Marcos Herraras, and I think it was -- I think there was later something on redirect relating to it. The record should bring that out. Perhaps Mr. Schwartz will remember it.

THE COURT: I will sustain the objection. I do not see the relevance.

All right, let us go ahead.

BY MR. COSTELLO:

Q Let me ask it this way: did you ever receive any information from Marcos Herraras?

A From --

MR. GIULIANI: Objection.

MR. FELD: Objection, your Honor. This calls for hearsay.

THE COURT: How many lawyers for the government are making objections?

MR. FELD: Both of us, your Honor.

THE COURT: Hereafter, Mr. Feld, I will entertain objections from you or Mr. Giuliani -- which will it be?

MR. GIULIANI: I will.

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kp3 J.Novoa-direct

MR. FELD: So far as witnesses are concerned.

THE COURT: What is the question?

(Question read.)

THE COURT: All right. We have not finished the question.

Did you ever receive any information from Marcos Herraras about -- what? About anything?

MR. COSTELLO: No, about the sale and trafficking in narcotics in the City of New York.

MR. GIULIANI: Objection, your Honor.

THE COURT: Yes, on the same grounds. I do not see any relevance with regard to the issues here.

Q Joseph, did you tell the ladies and gentlemen of the jury that you had informants?

A Yes, sir.

Q Was Marcos Herraras one of your informants?

MR. GIULIANI: Objection.

THE COURT: Yes. Let us drop Marcos Herraras. He is not involved in this case. The jury doesn't have to decide about Herraras.

Q Did you ever have any dealings with one Lorenzo Cancio?

A No, sir.

Q Did you ever get any narcotics from Lorenzo

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Cancio?

A No, sir.

Q Did you ever get a single solitary penny from Lorenzo Cancio?

A No, sir.

Q Joseph, did Carlos Aguiluz lend you a thousand dollars?

A Yes,he did.

Q Will you tell the jury the circumstances of that transaction, telling them what you said to him and what he said to you?

A About two years ago we were no longer in narcotics -- we were no longer in SIU. We were both assigned to a Brooklyn group, and I had conversation with Carl about a problem that I was having -- a porch that was leaking and required extensive cement work, and in fact I asked him if he wanted to come with me to a bank and make a loan.

Well, he said, "How much do you need?"

I said, "A thousand dollars."

He said, "Well, rather than pay it back to the bank, I have a thousand I can lend you," and I borrowed it from him.

Q Did there come a time when Carlos asked either

you or Mrs. Novoa for the return of that thousand dollars?

MR. GIULIANI: Objection, your Honor.

THE COURT: I will permit it.

A Yes.

Q Will you tell the jury the circumstances, please?

A About February, early in February, I had gotten a call from Carl --

Q Of what year?

A Of this year.

Q All right.

A -- and he asked me if I could pay him back the money he had loaned me two years ago, and I said, "Sure."

I says, "You know, it didn't work out. I have to go back to the bank anyway."

I said,"Other things came up,I have a new son, I was presently taking care of my wife's grandfather who is living in my house and just had a stroke."

I says, "So it is ridiculous to wait for money to come in that isn't coming in. I am not working in a bank as a teller. I will go down and make an application and I'll call you back to let you know how long it will take before I have the physical check in my hands."

I found out after the application of the loan

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that I would receive the physical check on February 22nd.

I had another conversation on the phone with Carlos and I told him, "I'll have the check the 22nd."

I was working in the bank at the time, moonlighting, and I got the check from the bank. He had asked me if I could give it to him in cash. I was going to cash the check. I told him -- I called him up -- he -- I called him and he had told me he was going to the doctor's, that he would meet me at the bank approximately at one o'clock, and I asked him to make sure he was on time because in fact I was scheduled to work as a detective in Sheepshead Bay at 4 o'clock so I couldn't wait around too long.

About 11 o'clock, 12 o'clock -- I don't remember the time, my wife called and told me that my father -- her father had passed away. I -- after that phone call I called Carlos's home. I spoke to his wife. I explained the circumstances to her. I didn't mention anything about the loan to her. I said, "Look, Carl was supposed to meet me and have lunch today. My wife just called me up and said her father passed away. I won't be able to be there. If he should call your house explain to him why and I will get in touch with him and give him the information on where my father-in-law was going to be

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laid out."

On Sunday, after the 22nd, Carl Aguiluz came to my father-in-law's -- excuse me, Saturday or Sunday, early in the morning he had called me up and got the information as to where my father-in-law was being laid out, and he says, "Did you take care of that bank matter?"

I says, "Yes, I have it."

He came to the wake, expressed his condolences to my wife and to my mother-in-law --

THE COURT: Well, just keep it to the loan. Did he ask you at the wake for the loan?

THE WITNESS: At -- at the wake he asked me to go with him across the street to a bar, and he didn't ask me -- I took out six $100 bills and a $400 personal check, and I explained to him that I had to keep $400 cash because of expenses that I was currently incurring over this week-end of the wake, and I handed him six $100 bills and my personal check for $400.

THE COURT: All right, next question.

Q Did you of necessity obtain a bank loan to repay this loan?

MR. GIULIANI: Objection, your Honor.

THE COURT: Yes, we have had enough of this.

Q Joseph, I would like to go over the indict-

ment.

Joseph, do you recognize the names Emilio Diaz Gonzales, also known as Alfred Picardo, Elena Rizzo, also known as Yolando Sarmiento, Jose Luis Mulas and Jorge Rodriguez Arraya -- do you recognize those names?

A Yes, sir.

Q Will you tell the ladies and gentlemen of the jury who thosepeople are?

A Those are four individuals that were arrested as a result of the 100-kilo arrest.

Q Now, Joseph, did you aid, relieve, comfort and assist these people, or did you punch one of them in the mouth, arrest all of them, and get them arraigned and put in jail?

MR. GIULIANI: Objection to the form of the question, your Honor.

THE COUPT: Of course. It is highly improper. You can call for a yes or no answer, did he do the things charged in the indictment, but your argument to the jury will be made in summation.

MR. COSTELLO: Thank you, your Honor.

Q Did you, Joseph, relieve, comfort and assist those offenders?

A No, I did not.

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Q Joseph, did you ever bribe, intimidate or obstruct the apprehension and prosecution of these offenders?

A No, sir.

Q Joseph, did you ever kidnap or otherwise unlawfully cause the offenders to return from Fort Lee, New Jersey, to New York?

A No, sir.

Q Joseph, did you on or about April 14, 1970, take the sum of $1200 from anyone of the offenders or anybody else?

A No, I did not.

Q Joseph, did you and Peter Daly ever take, seize 5 kilograms ofheroin and cocaine from 210 West 19th Street, New York?

A No, I did not.

Q Joseph, did you around April or May of 1970 have a conversation with Peter Daly and anybody else wherein you said that you had taken the sum of $5000 from one of the offenders, to wit, Yolando Sarmiento?

A I never had that conversation with Daly or anybody else.

Q Did you ever take a penny from Yolando Sarmiento or anybody else?

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A No, I did not.

Q Joseph, in and around late April, May and June of 1970 did you and Peter Daly have conversations relating to accepting the sum of $15,000 to corruptly dispose of criminal charges pending against the offenders?

A No, sir, I never did that.

Q Joseph, in and around May and June of 1970 did you and Peter Daly ever have conversations by and between yourselves agreeing to sell and transfer the aforementioned 5 kilograms of heroin and cocaine?

A No, sir,I did not.

MR. COSTELLO: I will omit certain of the other counts, your Honor.

THE COURT: All right.

Q Joseph, during the summer of 1970 did you meet with Detective Peter Daly and others and divide amongst yourselves the sum of $54,000, resulting allegedly from the transfer and sale of the approximately 5 kilograms of heroin and cocaine?

A No, I did not.

Q Joseph, in and about April, May and June of 1970 in the Southern District of New York and elsewhere did you and Peter Daly unlawfully, wilfully and knowingly relieve, comfort and assist the people described as the

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offenders?

A No, I did not.

Q Joseph, in or about April, May and June of 1970 did you and Detective Peter Daly unlawfully, wilfully and knowingly, by means of bribery, misrepresentation, intimidation and force obstruct, delay and threaten to communicate information to the Federal Government relating to the apprehension and detection of traffickers in narcotics?

MR. GIULIANI: Objection, your Honor. I think that has been asked and answered.

MR. COSTELLO: It is in the indictment,sir -- here is the count --

MR. GIULIANI: How many times are you going to read it?

MR. COSTELLO: You drew the indictment, not I.

MR. GIULIANI: That is true, your Honor.

THE COURT: I will permit it. Overruled.

Is the answer "No"?

THE WITNESS: That is correct, sir, no.

THE COURT: All right, next question.

Q Joseph, in or about April, May and June of 1970 did you and Peter Daly unlawfully agree to distribute and divide amongst yourselves the sum of $100,200?

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A No, I did not.

Q Joseph --

MR. COSTELLO: And, your Honor, I will be omitting certain portions of the paragraphs for the reasons discussed.

THE COURT: Yes.

Q Count 4, Joseph, in and about April, 1970,and continuously thereafter, up to and including the date of the filing of this indictment in the Southern District of New York did you with Peter Daly and others unlawfully, wilfully and knowingly conspire, confederate and agree to violate Sections 173and 174 of Title 21 of the United States Code?

A No, I did not.

Q Joseph, did you and Peter Daly, together with other persons known and unknown to the grand jury, in the Southern District of New York, unlawfully, wilfully and knowingly receive, conceal, buy, sell, factilitate, transport, conceal a quantity of narcotics, the exact amount and nature being unknown to the grand jury, after the narcotics had been imported and brought into the United States contrary to the law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections

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173 and 174 of Title 21 of the United States Code?

A No, I did not.

Q Joseph, did you, to effectuate the results as alleged in the United States Attorney's indictment --

MR. FELD: The grand jury indictment.

MR. GIULIANI: Your Honor, the grand jury's indictment -- not the United States indictment.

THE COURT: I am sure that was just an inadvertence. You mean the grand jury indictment.

MR. COSTELLO: Yes, your Honor.

Q Joseph, did you conspire with Peter Daly and others to seize large quantities of heroin and cocaine and illegally retain in your possession approximately 5 kilograms of heroin and cocaine?

A No, sir, I did not.

Q Joseph, did you and Peter Daly conceal, transfer and cause to be transferred 5 kilograms of heroin and cocaine to an intermediary?

A No, sir, I did not.

MR. COSTELLO: If I may have a stipulation from Mr. Giuliani that the remainder of the charges are in a large sense repetitious, I shan't pursue it.

THE COURT: Well, there are similar charges.

MR. COSTELLO: Yes, your Honor.

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THE COURT: I can tell the jury that.

MR. COSTELLO: Would you, please?

THE COURT: I can say that they relate to different alleged transactions but the nature of the charges is the same that Mr. Costello has just read.

MR. COSTELLO: Thank you, your Honor.

All right, that will be all, Joseph. I am sure these gentlemen will have a question for you.

THE COURT: Suppose we wait until after lunch -- suppose we take our luncheon recess now and you can cross-examine when you come back.

Madam Foreman and ladies and gentlemen of the jury, we will take our luncheon recess now -- it is a little earlier than normal but we will come back at 2 o'clock and resume then. Thank you very much.

THE CLERK: The jury is excused until 2 o'clock.

(The jury left the courtroom.)

MR. SCHWARTZ: Very briefly, your Honor. If your Honor please, after some motions that I made pursuant to Rule 29 yesterday, and in line with your Honor's ruling, it sent me back to the books. I knoe that your Honor has reserved decision, and in line with that reservation of the decision I would like to call your Honor's attention and hand up two cases which your Honor can peruse at your

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leisure.

THE COURT: All right.

MR. SCHWARTZ: United States v. Koch, which is 113 Fed. 2d 982, and of course United States v. Zeuli, at 137 Fed. 2d 845.

Koch is referred to in the Eng case, as a matter of fact, your Honor. I think it does lock in the completed transaction that your Honor was inquiring about, where the sale was actually completed.

THE COURT: Differing from Eng where there was not any substantive offense.

MR. SCHWARTZ: Yes.

THE COURT: All right, I will be glad to look at it.

We will recess until 2 o'clock.

THE CLERK: Court stands in recess until 2 o'clock.

(Luncheon recess to 2.00 p.m.)

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AFTERNOON SESSION

2:00 p.m.

MR. SCHWARTZ: Your Honor, I think we are missing Costello and company.

THE COURT: All right, we will wait for a minute.

(Pause.)

MR. COSTELLO: Those elevators are something, your Honor.

May I have a moment to wash my hands?

THE COURT: Of course.

(Pause.)

MR. SCHWARTZ: While Mr. Costello is washing his hands, just a little housekeeping matter. I don't know if I mentioned during the Rule 29 motion that I wanted to renew my pretrial motions and the motions made during the trial. If I didn't say that, I would like to say it and have it adopted as if I did.

THE COURT: All right.

It now appears on record.

MR. SCHWARTZ: Thank you, sir. I'm sure your ruling would be the same anyway.

THE COURT: I think it very likely.

Before I bring the jury in, Mr.Costello, Mr.

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Schwartz and I guess you can cover for Mr. Stone, Mr. Schwartz, it seems pretty obvious that I can't send or shouldn't send this case to the jury tomorrow. If you attempted to sum up tomorrow morning -- I don't usual limit counsel as to time -- I couldn't give the case to the jury until the afternoon and it seems to me that on a Friday afternoon to give a case to a jury is a mistake, especially before a long weekend and I doubt very much if counsel would want to sumup tomorrow in any event and wait until next week for the charge. I would doubt it and I want to be fair.

I imagine the government and the defendants would agree that we will have to go over until next week. Doesn't it seem that way?

MR. GIULIANI: The government would prefer if we finished the evidence today to finish the trial tomorrow.

THE COURT: How can we do it? You tell me.

MR. GIULIANI: Your Honor, assuming we do finish today, and I don't know that we will --

THE COURT: I don't either.

MR. GIULIANI: -- it would seem to me that we could get started 9:30 tomorrow morning and it is possible to that we could get this case to the jury by 1 o'clock, 1:30. I am not going to take an unbelievably long period

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of time to sum up, your Honor. It hasn't been that long a trial that we are going to have two and three-hour summations from each counsel. It would seem if we started at 9:30 that would give us four hours until 1:30 to complete summations and the charge.

It is a case that has received some publicity. We have had problems with jurors before in this case reading newspapers. It seems to me that we might be jeopardizing the jury's situation and risking the possibility of a mistrial if we have this thing go over to Tuesday, since we are not coming back on Monday.

THE COURT: You are assuming that if I gave the case to the jury by 1 o'clock that the jury would have a verdict by 6 o'clock?

MR. GIULIANI: I am not saying that.

THE COURT: If the jury doesn't have a verdict by 6 o'clock, are you suggesting that I bring them back on Saturday, Sunday and Monday?

MR. GIULIANI: Yes, your Honor.

THE COURT: I am not going to do that. I am afraid, Mr. Giuliani, I can't accept your suggestion.

MR. GIULIANI: The only other possibility -- if we finish today this jury will not be considering this case until Friday, Saturday, Sunday, Monday, five days after they

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heard the last witness.

THE COURT: But on Tuesday, supposing on Tuesday counsel sum up and I give the case to the jury with instructions. What is wrong with that?

I don't see that either side has any particular advantage.

MR. GIULIANI: I think, your Honor, that the jury is going to be in a situation where they are really relying basically on what we say in summation, not the testimony of witnesses.

THE COURT: I think this is probably an appropriate case for me to give greater emphasis to their ability to have any testimony read back to them.

MR. GIULIANI: We can do that, your Honor.

THE COURT: I don't normally emphasize that, but of course I give them the standard charge that what the government says and the defendants' lawyers say nor what I say is not binding on them. It is their recollection that controls.

But in a sentence, under the circumstances, I probably ought to say: And always bear in mind that if you are in any doubt about what the testimony was ask to have it read back.

That is a question really of judicial management.

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I have another case set for Tuesday morning and I have no plans to go away. I will be working all weekend, but it seems to me to give a case of this sort to a jury on Friday afternoon is probably not a good idea. It is just an administrative problem so I am inclined to do it that way and if we do it that way, Mr. Giuliani, it also is probable that my charge would be improved because I may be able to consider the requests to charge and if the defendants have further requests to charge and give them to me before the close of business tomorrow, I could consider them over the weekend.

I think we have spend enough time and effort on this case so that I would rather do it right. I haven't heard from the defendants.

Mr. Schwartz?

MR. SCHWARTZ: I agree with your Honor. I think your Honor's determination is a wise one.

MR. COSTELLO: I haven't always agreed with your Honor, but I am in complete accord with you now, sir.

MR. GIULIANI: The government would not object to sitting on Saturday, for whatever it is worth, and completing the case, if we needed some extra time to prepare summations.

THE COURT: Sitting on Saturday is not really

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very practical. I don't want to emphasize about the reporters. The reporters, if I want them in on Saturday, they will come, but they are about as hard pressed as anybody I know and I press them probably as much as any other Judge because I usually start early and sit late and especially, this is a long weekend.

I am about as strict a disciplinarian, I think as there is, almost up to Judge Weinfeld, and I frankly hesitate.

MR. GIULIANI: Would your Honor just see where we end up today and think it over? Maybe at the end of the day we could be heard again.

THE COURT: I don't suppose that would really do any harm.

MR. GIULIANI: We don't even know if this will be a problem yet.

THE COURT: I don't see how it will change anything. Suppose we finished at 3 o'clock. I still couldn't ask counsel to sum up very well I think tomorrow. I think when I excuse the jury today I had better tell them that we will finish at a quarter of one tomorrow, if that is necessary, if we have to take testimony of the defense in the case, but we will have summations and the charge on Tuesday.

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I'm sorry to disagree with the government, but it just does seem to me that that is about it.

All right, Mr. Clerk, would you get the jury, please.

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mkpl

(Jury in the box.)

J O S E P H N O V O A, resumed.

THE COURT: All right.

CROSS EXAMINATION

BY MR. GIULIANI:

Q Mr. Novoa,when did you first become a policeman?

A February 15, 1963.

Q And you told us on direct examination that you, similarly to Detective Aguiluz, had worked as an undercover man with subversive groups, is that true?

A As an observer. If I said "undercover," it's wrong. I just observed these demonstrations.

Q Well, when you observed these demonstrations you weren't dressed the way you are now, for instance, were you?

A Sometimes in the vicinity of the UN, I was required to show up with a suit and tie.

Q And prior to the time that you went to the SIU, had you acted as a detective?

A Yes.

Q And as detective, both before you went to the SIU and after you were in the SIU working there, your major function was to investigate crimes, to determine who were committing a crime, isn't that right?

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A That is right.

Q And you were an expert, weren't you? That is what you were being paid for?

A Investigations, yes, sir.

Q And from your testimony I understand that in March of 1970 you effected the arrest of a narcotic trafficker, Luguizamon?

A That is correct.

Q And then you told us about the 100-kilo arrest, is that right?

A That is correct.

Q And I assume there were many other arrests that you participated in, is that right?

A Yes, sir.

Q And as I remember the testimony -- well, strike that.

Prior to the time that you found or your partners found the 100 kilos at this apartment, you had already -- you yourself had already become pretty well convinced that these people were narcotics traffickers, isn't that right?

A Will you repeat that question?

(Question read.)

A We were suspicious. I don't know how convinced we were. We were suspicious.

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Q And very often as a police officer you investigate based on the suspicions that you develop, isn't that right?

A That is correct.

Q Now, how long had you known Carl Aguiluz?

A Before the 100-kilo arrest?

Q That's right.

A I met him in June of 1969 with 28 other members who at that time were assigned to the Special Investigations Unit.

Q The two of you went into SIU together?

THE COURT: Mr. Novoa, the 100-kilo arrest that you have talked about, that is April 15, 1970, isn't it?

THE WITNESS: That is correct.

THE COURT: All right. That is the point of time to which you can relate; right?

THE WITNESS: Right.

Q Aside from the 100-kilo arrest, you also were involved in, I think October, 1969, with Detective Aguiluz in the arrest of a defendant or defendants named Mendez and Castilla, isn't that correct?

A That is correct.

Q You were involved in the arrest with Detective Aguiluz of Luguizamon and Diaz, isn't that correct?

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A That is correct.

Q And this 100-kilo arrest in April of 1970, and then you were also involved in the arrest of the defendants named Olate and Quintanilla?

A Can I clarify my involvement in that arrest?

Q Sure.

A An arrest occurred in the early morning hours -- the date of the arrest I am not sure of. I was not present at that arrest. I was called at my home by Detective Aguiluz to assist him and Sottile.

I arrived there. They had already been at the precinct. It became apparent that Sottile was taking both subjects to court, and they weren't going to pursue whatever information they had. They led me to believe on the phone that there might be other locations that they were going to hit.

After I discovered or I determined at the precinct that they weren't going to hit any other places, I left. So that is my involvement in the Olate arrest.

Q You were also involved in the arrest of the defendant named Banderas and others on May 11, 1970, with Detective Aguiluz -- and other defendants?

A I don't recognize the name Banderas. Is that the arrest that Pete Daly took?

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Q That is the arrest out at the airport, JFK Airport.

A Again, Pete Daly arrested those individuals with Sergeant Stefania alone while I was in Manhattan, and when you say the name Banderas, I have no recollection of it, since they took them to the precinct and booked them, and I just met them later.

Q And did you arrest a defendant named Lopez with Detective Aguiluz? Does that name ring a bell?

A I had a wiretap on an individual named Lopez, but when I did his apartment all I did was voucher about $5000. There was no arrest. There was no evidence, but I vouchered the money because I believed it was the fruits of narcotic sales.

Q Tell me, Mr. Novoa, approximately how many arrests did you make in the sense that it was a result of work done by you and Aguiluz together -- either the two of you together or with other officers?

A You are talking about separate arrests -- not individuals involved? Incidents that resulted in arrests?

Q Whichever way you find it easier. Just tell us which it is.

A I recall approximately five separate incidents where I was present with Aguiluz when an arrest was made.

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Q And I think you told us that Aquiluz, you and Daly became a team some time in March of 1970?

A That is correct.

Q And that lasted until approximately the end of September, 1970; is that correct?

A That is also correct.

Q During that period of time you spent most of your working day with Detective Aguiluz in one way or another, didn't you?

A Yes, sir.

Q And in addition to that you socialized with Detective Aguiluz, isn't that correct?

A I had been to his house on two occasions. We attended, I think -- I know of one official police function together with husband and wife -- with our wives -- as husband and wife.

Q And you also had gone to dinner with him, had drinks with him.

A That is correct, during working hours.

Q Would you describe your working relationship with him as friendly?

A Very friendly.

Q You worked on five major incidents with him and you socialized with him?

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A That is correct.

Q And you were at his home, is that right?

A That is right.

Q Did you notice in Detective Aguiluz's home many expensive pieces of furniture?

A He had recently done his basement, I remember, and of course there was the swimming pool.

Q He had a swimming pool?

A He had a swimming pool.

Q What kind of a car did you notice Detective Aguiluz drive?

A While I worked with him the only car that I knew he had, he told me about his wife having another car, but the only car I have ever seen him in was a Volvo -- it was a 1970 or 1969 Volvo.

Q When you were with him during this period of time, and in fact at any time that you were with Detective Aguiluz, did you ever notice him with large amounts of cash?

A I never saw him -- the largest amount of cash I ever saw him was when he gave me the $1000.

Q You never saw him with over $1000 cash in his possession?

A That is the largest amount that I saw him. Now I don't know what you mean, what is a large amount to

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you or what is a large amount to me.

Q Well, that is a large amount.

A Okay.

Q Did you ever notice him charging, or let us say expensive meals at restaurants, $100 meals, $200 meals at restaurants?

A When Aguiluz was promoted to second-grade, he invited myself, some other members of the SIU -- because at that time usually when a detective gets promoted by a grade it is customary for him to buy a couple of bottles and cold cuts at a little office party, but we were entering an era in the Police Department that forbade any celebrations, any alcohol in the Police Department building, so he invited some members to a restaurant on Second Avenue in Manhattan.

I know he picked up the bill for whoever showed up that day. I don't know how much it was.

Q Your counsel on cross-examination asked Detective Aguiluz whether he had made -- estimated the amount of money that he made in approximately a one-year period in the SIU, and Detective Aguiluz said between eighty and one hundred thousand dollars. Do you recall that?

A Yes, I do.

Q Tell us, during the period that you worked with

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Detective Aguiluz every day, that on occasion you socialized with him --

A Yes.

Q -- what evidence did you notice of his having this much money?

A I never saw him display any amount of money that could be used as evidence or facts that he had that kind of money.

Q You never at any time became even the slightest bit suspicious during the period of time that you worked with Detective Aguilus, day in and day out, that he was, as he admitted on the stand, taking large amounts of money from people who were being arrested for narcotics trafficking, is that correct?

A One time I questioned him --

Q Well, can you tell me --

A -- out of curiosity over the swimming pool that I saw at his house.

Q When did you do that?

A When I went to his house, I think, in the summer of 1971.

Q That was a long time after the period of time you were his partner.

A No.

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Q You said you left it in September, 1970?

A Yes -- six months is a long time -- the following summer.

Q And that was the only occasion on which you became even the slightest bit suspicious --

A No.

Q -- that Detective Aguiluz -- let me finish the question -- on the joint arrests that you were making, was taking large amounts of money from people that you were arresting together?

A To clarify the question that you said to me about being suspicious, I was very impressed at the size of the swimming pool that I saw. It was sunken. It was heated. It had lights. There was a little house on the ground you could change your clothes in, which I did, because I went swimming in the swimming pool.

Some time during the day I asked him, which I never asked any of my partners or questioned anybody about "Where did you get the money to buy a car?" or anything else -- I asked him, "How much money can this pool cost?"

And that is the only time that I saw Aguiluz or anybody that I worked with have anything of material value that made me think the individual had a lot of money.

Q Aside from that, you saw no evidence that Aguiluz

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had any more money or less money than anyone else?

A Not large amounts, right.

Q Now in October -- in fact, on October 22, 1969, did you and Detective Fox and former Detective Sottile and Aguiluz arrest two defendants, one named Mendez and the other named Castilla?

A Yes, that is my case.

Q That was your case?

A My case.

Q In other words, you took, as you said to us before, you took over the arrest formally and officially?

A I took the mainsubject of that case who was Arsenio Mendez.

Q And did you voucher in any money on that case?

A No, sir.

Q You found no money on the defendant, or did you find money and keep it and divide it with Fox, Sottile and Aguiluz?

A The only money that was on those defendants is moneys that they had that I could not prove was the fruits of narcotics, so I didn't voucher it.

Q How much was that?

A Well, as a general rule -- I can't tell you the exact amount, but as a general rule in narcotics if an

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individual had in excess of $5000 or even $3000 on him, and you were working on him for a period of months, and you seen that he never went to work, you could assume that this was money that was the fruits of narcotics, so you would voucher it, like I have done in other cases. So all I can tell you, Mr. Giuliani, I am sure they had some money. If they had been without any money I would remember it, but very few people that I arrested did not have some money.

THE COURT: How much did these people have?

THE WITNESS: Well, what we would call pocket money -- $30 to $50 to $60.

THE COURT: And did you let them keep it?

THE WITNESS: Certainly.

Q Did there ever come a time on October 22, 1970, when you met in a car in the Cadman Plaza in downtown Brooklyn and divided seven to nine thousand dollars with Detectives Sottile, Aguiluz and Fox?

A No, sir, that never happened.

Q Tell us how much heroin or cocaine or whatever narcotic you seized -- did you seize from Mendez and Castilla?

A I know how much.

Q Tell me.

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A Because it was my case. It was over four pounds of cocaine and heroin. I can't tell you exactly the difference, but I know it was over four pounds.

Q The charges against both those defendants were dismissed, however, on June 15, 1970, is that right?

A They certainly were, yes.

Q Now you told us about the arrest of Luguizamon and Diaz --

A Yes.

Q -- on March 31, 1970; is that correct?

A Yes, that is correct.

Q And how much narcotics was involved in that arrest -- the amount?

A I believe it was over 17 kilos of heroin, 28 packages. I am not sure of the weight. It wasn't my arrest.

Q And was it your -- can you enlighten us as to whether Luguizamon would be considered a large narcotics trafficker?

A Certainly was.

Q How much money did you find on Luguizamon or Diaz?

A On their personal effects?

Q That is right.

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A Again I can't give you the exact figure -- in the area of seventy or eighty, ninety dollars.

I think Luguizamon had a little more because somebody paid his hotel bill. He must have had mavbe more than fifty or sixty dollars.

Q There never came a time, you are telling us, as Sergeant Stefania testified yesterday, that you walked out of a room with a black bag containing approximately $40,000?

A That never happened. That never happened. I never did it.

Q You never went to the Holiday Inn and dropped 40,000 or so dollars on a bed and divided it up with Stefania, Egan and then later with your partners Daly and Aguiluz, as Stefania testified yesterday?

A Stefania testified yesterday that Aguiluz was there.

Q He testified, you rememeber --

A I remember what he testified. He testified that Aguiluz was there. However, I did not divide any money with Stefania, Egan, Aguiluz or Daly as a result of the Luguizamon arrest.

Q Tell us what arrest you did divide money with Aguiluz, Stefania, Egan, Sottile or anybody else besides

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those taking part in the arrest.

A I testified earlier I have never stolen any money during any arrests with anybody as a partner.

Q Did you ever take it as a loan? Did you ever take money from a narcotics person that you arrested?

A Never -- only to voucher it, of course.

Q Of course. Did you ever take money from a defendant in a non-narcotics case?

A No, sir.

Q Did you ever take any money at all while you have been on the New York City Police Department?

A Just my salary.

Q Now let us talk about the 100-kilo case for a minute.

There came a time after you came back to New York from New Jersey with the two, or the four individuals that you had arrested, that you say a gun was found under the seat?

A Yes, sir.

Q All right. Would you tell us how you say that occurred?

A After we came from New Jersey and it became obvious that the people were just going in ridiculous directions, we stopped again in front of the same

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delicatessen on Seventh Avenue and Grove Street.

Detective Aguiluz got out of the car to tell Daly to take over the lead in fact, because Daly knew where the Charles Street Station was. Neither one of us did -- that we were taking these people in for investigation.

Aguiluz came to the rear of the door, opened the door, told whatever individual was sitting next to him, "Give me all the papers of your identification."

At this point I reached over to the female's purse that was on the floor of the car to also peruse her papers, and that is where I found the gun.

Q But then it was decided that you would drop the charges relating to the gun, is that right?

A No, sir. What I testified to is that Aguiluz had secured a search warrant and had convinced myself and all the other members that were present that it would be easier to arraign the people for the drug charges as charge No. 1, and just have the gun charge as charge No. 2, even though the events happened in the opposite order. If we did it with the gun we would have to arraign them, go through the whole processing system, and then go through it again for the drugs.

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Q You told us Detective Aguiluz came back with a search warrant; isn't that right?

A Detective Aguiluz obtained a search warrant, that is correct.

Q As I understand it, Mr. Novoa, Detective Aguiluz had already entered that apartment with Detective Daly prior to obtaining the search warrant; isn't that correct?

A That is what Aguiluz said.

Q In fact, you had talked to him while he was at the apartment, had you not?

A I testified that Detective Daly called me and sadi "We have to get a lock-picker."

Q I thought --

A That is right.

Q Who was it?

MR. COSTELLO: May the witness be permitted to answer the question?

THE COURT: Yes. Do I understand you had not finished, Mr. Novoa?

THE WITNESS: No, sir.

THE COURT: Go on and finish.

A My recollection is that Daly called me and said "Can you have John Kid" -- he mighthave said John Kid or he mighthave said "Your friend the locksmith meet us."

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That is the only conversation we had on the telephone.

Q Is it your testimony that you never talked to Detective Aguiluz when Detective Aguiluz was in that apartment?

A I don'tknow if they were in the apartment. I waswith the prisoners in the 6th Precinct.

Q Before the time that you were left behind with the prisoners until the time that you arrived at the apartment did you talk to Detective Aguiluz?

A He might have called me later on in the morning and had a conversation about talking to Mike Santa Cruz in reference to the warrant.

Q Didn't you testify on direct examination this morning that it was Detective Aguiluz that called you?

A I think it was Daly.

Q Think about it. Which one was it? How do you remember?

A I think I testified that Daly called me.

Q Forget what you testified to. What happened? What is the truth?

A Didn't you ask me who I testified to this morning?

Q Yes.

A I think I said Daly this morning.

Q What in truth happened? What happened?

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A I think Daly called.

Q You testified on direct examination that you had no knowledge of any narcotics being held from the hundred kilo seizure; is that correct?

A That is correct.

Q Have you ever, when you seize narcotics, held it for a period of timebefore checking it into the Property Clerk's office?

A Only the time necessary to process the arrest. As soon as we had the time to go to the lab with it we did.

Q Have you ever removed narcotics from the Property Clerk's office?

A To go to court, yes.

Q How do you go about doing it?

A Well, during this period, of course, there was a different procedure than the one from today. You want that period or today's?

Q When did ti change?

A I think in 1972, after they found certain discrepancies in the Property Clerk.

Q I'm interested in the period before, up to 1972, before 1972.

A Right. Well,the procedure was you would take your evidence to the police laboratory at the Police

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Academy. You would submit it for analysis and you would get a receipt of the time you were there and who took it from you.

A period of time would go by, sometimes days or even weeks, depending on the bail situation of the person being incarcerated. You would get notified from the laboratory that an analysis had been completed and at that time you would pick it up from the laboratory and bring it to the Police Department Property Clerk.

Q Would you ever remove narcotics from the Police Department Property Clerk's office, you as a detective, in order to bring it to court?

A Yes, sir.

Q Do you have to show some identification before you remove it, like a badge?

A During that period, of course, if you were asked of course you would have to identify yourself, but my recollection is I had been there so many times with arrests that everybody sort of knew me, so I never have any independent recollection of anyone saying "Who are you"? They knew who you were because you were asking for the evidence with police numbers and using the name, which in this case was my name, who submitted the evidence originally.

Q If I went there, Detective, and asked to remove some narcotics, they would ask me for identification?

A I don't think they would give it to you, right, yes.

Q They would give it to someone they either knew as a detective or someone who identified himself as a detective?

A That is correct.

Q Did you ever have occasion to remove narcotics from the Property Clerk's office and hold it for a period of time?

A When I took it to court, yes.

Q What is the longest period you had narcotics out of the Property Clerk's office signed out to you?

A Well, it is a hard question to answer because some cases once the trial begins they end the trial, the trial ends late in the afternoon sometimes and the Property Clerk would be closed, so the property in question would either be held by the District Attorney or if the DistrictAttorney didn't have a safe you had to keep it.

Q Did you ever take out the hundred kilos that way?

A No. That narcotics -- I remember being with Stefania and Aguiluz and Daly when we took it out of the lab and bringing it to the property clerk, and I don't

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know if I was with themmonths later when we got a request from a doctor officially through the Police Department who wanted a sample of heroin so that he could develop a heroin tester. I remember going up to the property clerk and, in fact, taking out a kilo which in fact was sent to this doctor to help develop this test, and that heroin that was taken out at that time in fact was heroin.

Q So up to that point it was still heroin?

A That is correct.

Q It was later that it became starch?

A I don't know when that happened.

Q You have heard the term flaking, haven't you, in this trial?

A Yes, I have.

Q And you have also heard Detective Aguiluz testify that in essence Detective Daly suggested placing a gun on Gonzales; is that correct?

A I heard that testimony.

Q You told us that that is not true?

A Yes, I have.

Q Did you ever flake a defendant named Jorge Braner?

A Jorge Braner was arrested with one kilo of heroin on 14th Street that he had in his possession.

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Q Did he claim that he didn't? Was there an investigation of it and were you cleared by SIU, your superiors?

A There was an investigation as to an allegation that he made not so much that he didn't have the heroin -- my recollection of the investigation is he was mad that my informant set him up for the arrest, which in fact he did.

THE COURT: You asked several questions there. I am not sure that I understand all of the answer.

Did this defendant, Mr. Novoa, claim that he didn't have the narcotics?

THE WITNESS: He might have, your Honor,but what I remember of the complaint was that he was mad that an informant of mine had set him up, pointed him out for me, which in fact this informant did.

THE COURT: All right.

Q Who investigated Mr. Braner's complaint -- was it Sergeant Stefania?

A No, Sergeant Stefania did very little in that area of investigation.

Q Was it Lieutenant Egan?

A I don't recall Egan. I think this was a higher investigation. It might have been one of the inspectors.

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I can tell you that I was also questioned by some agents in the Eastern District in relation to this. I think the fellow's name is Sullivan.

Q Tell us approximately how much money you earned in 1970?

I will make it easier for you.

MR. GIULIANI: May I have this marked, that is, these two documents marked as the next two government exhibits.

(Government's Exhibits 12 and 13 were marked for identification.)

Q I show you, Detective Novoa, what has been marked as Government Exhibit 12 for identification and ask you if that is a copy of your 1969 federal income tax return.

A Yes, it is.

Q Is that your signature at the bottom?

A Yes, it is.

Q And your wife's signature?

A Yes.

Q I show you what has been marked as Government Exhibit 13 for identification and ask youif that is a copy of your 1970 federal income tax return?

A Yes, these appear to be copies, right.

Q Tell us, with the help of that income tax

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return in front of you, how much money you earned in the year 1969?

A Somebody does my taxes. I don't do them, so maybe you could help me.

Q Look at 911 on the first page.

A Right.

Q Does it read on the 1969 return $11,247?

A That is correct.

Q And as to the 1970 return it reads $13,389; is that correct?

A That is correct.

Q During those years, 1969 and most particularly 1970 did you have any income in addition to what is listed on that return?

A I know I drove a cab. It might have been in 1968. I guess this is the only income I had besides the small interest or whatever it shows here.

Q You list interest on the returns, don't you, Detective?

A Yes, I do. It is kind of confusing to me. Why don't you just tell me what I made. You know.

MR. GIULIANI: We will offer it in evidence, your Honor.

MR. COSTELLO: No objection.

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THE COURT: Mark it.

(Government Exhibits 12 and 13 were received in evidence.)

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Q Why don't you look at it. I will just read a few little portions of it.

A 1969 or 1970?

Q Let's try 1969 first. It shows on line 11 that your wages for yourself and your wife were $11,247 and that additional income was $190.

A Right.

Q What I am asking you is this: Did you have any additional income other than what is listed on the return in that year?

A No, sir.

Q No gifts, inheritances, winnings at the racetrack, loans, if you recall?

A Not that I can recall.

Q Will you take a look at 1970, which I think is Government Exhibit 13. That lists on line 12 the wages, salaries, tips, $13,389; is that correct?

A That is right.

Q And $87 in interest; is that right?

A That is correct.

Q And from income other than wages, $195 for a total

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of $13,671 as the combined income of yourself and your wife?

A That is correct.

Q I ask you the same question: Did you have any other interest, any other income in that year not listed?

A A couple of hundred dollars in children's gifts from the family.

Q In addition to that nothing else?

A Not that I can recall.

Q You told us that you had a car -- I think you said it was a beaten up old Volkswagen -- back on March 31, 1970 when the Luguizamon case was going on; is that correct?

A Not a "beaten up old." In 1970 it was only a two-year old Volkswagen and that had been hit on one of the doors.

Q Within a month after the Luguizamon case and after the hundred kilo case you bought, I think it was, a $4,000 Buick; isn't that right?

A I put a down payment on one and I got a loan for it, yes.

Q Did you put that down payment in cash, Detective Novoa, $2,000 in cash?

A Yes.

Q Tell us, Detective Novoa, where you got the cash?

On April 30, 1970, $2,000 in cash. Tell us where you got it.

THE COURT: Mr. Giuliani, you are raising your voice a little more than necessary. I know acoustics are bad here but --

MR. GIULIANI: I'm sorry, your Honor.

THE COURT: All right.

Q Tell us where you got the cash.

A I worked for it as a New York City police officer.

Q Do you get paid in cash by the New York City Police Department?

A I get paid by check like everybody else.

Q Yet you walked into the showroom and put down $2,000 in cash and that came from your salary; is that right?

A To the best of my recollection, yes.

Q Your $13,000 a year salary; is that right?

THE COURT: Excuse me. Did I understand you to say that the city pays police officers in cash?

THE WITNESS: No, sir, he said that. I said in check.

THE COURT: In check?

THE WITNESS: Yes, sir.

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THE COURT: All right.

Q Do you remember the date that you made that purchase?

A Probably in June or May of 1970.

Q When did you put down the $2,000 in cash?

A You have it there.

Q I will show it to you.

A April 30th.

Q Tell us again, the Luguizamon case was on March 30th, was it, 1970; is that right?

A It still is on March 30th, that is right.

Q And the 100 kilo case was April 15, 1970?

A That is correct.

Q And you received no money in those cases; is that right?

A No money.

Q And you put down $2,000 in cash on a car on April 30, 1970?

A That is correct.

Q Did there come a time in 1970 when you and Aguiluz and Daly went on vacation?

A Yes, sir.

Q Do you recall when you went on vacation?

A I know it was -- I was on vacation the latter part

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of June that year.

Q Was it from approximately June 22nd through July 3rd, 1970?

A If I had my memo books here, sir, I could tell you exactly.

Q If I tell you that the blotter of the SIU indicates that you were on vacation from June 22nd to July 3, 1970, would that refresh your recollection?

A Well, that could show, but there also would not show that I could have taken some lost time prior to that. That would probably be in my memo book. I don't know.

Q Did you return from vacation some time in early July 1970?

A We were away for a few days, right.

Q Do you recall Mr. Boutureira's testimony that some time right after you returned from vacation he gave you about $4,500; do you recall that?

A In February, I think he said.

Q No, he said after you returned from vacation, after you and Aguiluz returned from vacation he met with you and gave you the last sum of money, $4,500.

A All of Mr. Boutureira's testimony that I remember are transactions that didn't occur in February, March, April or May.

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Q In fact, according to you they never occurred; isn't that right?

A I told you that before.

Q I know you told me that. I just wanted to make sure.

THE COURT: No argument. The answer is it didn't happen as Boutureira testified. Isn't that it, Mr. Novoa?

THE WITNESS: That is correct.

THE COURT: All right, let's go on.

Q Did there come a time on July 16, 1970 when you went to the South Brooklyn Savings Bank and purchased a teller's check with cash for $5,000?

A I purchased it?

Q I didn't purchase it.

THE COURT: No, no, Mr. Giuliani. Just repeat the question, Mr. Reporter.

(Question read.)

A Could I see the notes you are refreshing from?

Q I will show you the record. No objection to that at all.

A I did not buy this check.

Q Well, it was made out to you, wasn't it?

A It is made out to me.

Q Who bought the check?

A My mother-in-law.

Q Your mother-in-law bought that check?

A She certainly did.

Q Then what did you do with it?

A I took it.

Q What did you do with it after you say your mother-in-law bought it?

A I think I used that as a down payment on my house.

Q Thatwas a gift of money that you didn't tell us about before -- you just remembered that one now?

A You asked me before about what I had on my taxes. I have been through this with the Knapp Commission. I don't have to put --

THE COURT: No, don't tell us about the Knapp Commission. What is your answer?

THE WITNESS: He asked me questions about my taxes.

THE COURT: Read the question, please.

(Question read.)

THE COURT: Really the question, Mr. Novoa, is this:

Is it that you are just remembering now this gift or --

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THE WITNESS: No, sir, I know of this gift since it was given to me.

THE COURT: No. All right, next question.

Q And then did you take that $5,000 teller's check that was purchased for cash and opened an account at another bank?

A I believe it was at the Hamilton Federal Savings Bank.

Q Did there come a time, in fact did you on May 29, 1970 open an account at the Manufacturers Hanover Bank?

MR. GIULIANI: May I have this marked?

THE COURT: Wait. Let's get an answer to the question, first.

A I opened a checking account, I think, at that time. That is all going through during the period of when I purchased my house, Mr. Giuliani.

Q It is also the same period as the Luguizamon case, the hundred kilo case, the airport case. In fact, the airport case was May 11, 1970, wasn't it?

A If I had my memo book I could say yes,but if you say so I'll say yes.

MR. GIULIANI: Can we have this marked?

(Government's Exhibit 14 was marked for

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identification.)

Q I show you what has been marked as Government Exhibit 14 for identification and ask you if that refreshes your recollection that on May 29, 1970 you opened a savings account at the Manufacturers Hanover Bank.

A I opened up an account and this says it is cancelled. That is all I see. I concede it.

Q Do you recall the date?

A It says here 5/29. I don't recall it.

Q 1970?

A Yes, 1970.

Q You don't recall it?

A No, sir.

MR. GIULIANI: The government offers Government Exhibit 14 for identification in evidence.

MR. SCHWARTZ: Against him?

MR. GIULIANI: Against the defendant Novoa.

MR. COSTELLO: No objection, your Honor.

THE COURT: All right, without objection it will be marked.

(Government Exhibit 14 was received in evidence.)

Q Do you recall now, Detective Novoa, how much money you deposited when you opened that account?

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A No, sir.

Q Do you recall on August 10, 1970 depositing $5,000 in that account?

A I was in the middle buying a house, Mr. Giuliani. I know I made various withdrawals and deposits.

THE COURT: Do you remember this?

THE WITNESS: I don't remember that date. If he shows me the paper I might remember.

THE COURT: Mr. Novoa says he does not remember.

MR. GIULIANI: Can we have these marked as the next two government exhibits.

(Government's Exhibits 15 and 16 were marked for identification.)

Q I put in front of you Government's Exhibits 15 and 16 for identification and ask you if that refreshes your recollection as to how much money you deposited on May 29, 1970.

A This is what you said about May 29, right, the Manufacturers.

Q On Government Exhibit 15 please look at the notation for May 29. Does it refresh your recollection as to how much money you deposited on May 29, 1970?

A It says May 29, $639.

Q Does that refresh your recollection?

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A No, that figure -- I don't know. It could be a pay check with some back money. I really don't know. The figure doesn't ring a bell.

Q Take a look at the same exhibit, the entry for August 10, 1970 and also take a look at 16 for identification and tell me if that refreshes your recollection as to how much you deposited on August 10, 1970?

A I just said that, $5,000.

Q Does that refresh your recollection that you did that?

A I am telling you that I don't have a recollection of the day because I was in the middle of buying a house, but I did make these deposits.

MR.GIULIANI: The government offers 15 and 16 for identification in evidence as 15 and 16.

MR. SCHWARTZ: Am I correct again that it is only against --

THE COURT: Yes, these exhibits I'm sure are offered only as against the defendant Novoa.

Is that right, Mr. Giuliani?

MR. GIULIANI: That is right.

THE COURT: All right.

MR.COSTELLO: No objection, your Honor. The defense joins in the offer.

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THE COURT: All right, received without objection.

(Government's Exhibits 15 and 16 were received in evidence.)

Q Did you get that $5,000 from your mother-in-law also, Detective Novoa?

A That is right.

Q So she gave you $10,000?

A She gave me more than that.

Q Then let's get right to the purchase of the house. On August 4, 1970 did you put down $3,250 on a purchase of the home?

A Yes,sir, that is the closing, the contract when I went to contract. Is that what they call it?

Q That was your original deposit on the house?

A $3,250, right.

Q Your mother-in-law gave you that also?

A I don't recall if I took it out of there or --

Q I will show them to you and you will tell me if took them out of there.

I show you Government's Exhibit 15 in evidence.

A Do you have the 3,250 check, the 3,225 check? That will tell you where it came from.

Q If you take a look at that I will look for the 3,250 check. I'm not sure it was a check, Detective Novoa.

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A You don't buy the house with cash. You have to give a check.

Q Was it a teller's check?

A I don't know.

THE COURT: This is getting down to just dialogue.

Can't we go back to the more normal process of question and answer?

MR. GIULIANI: I just wanted him to look at the records and see whether the $3,250 came out of that account.

THE COURT: Can you tell that and do you remember it, Mr. Novoa?

THE WITNESS: There has been so many figures, your Honor, I don't know what he is trying to say. That is why I asked him. I don't know.

THE COURT: He wants to know, I think, whether the $3,250 was taken to make the down payment on your house.

THE WITNESS: Yes.

THE COURT: From that account?

THE WITNESS: No, it didn't come from that account. There is no withdrawal for that amount here.

THE COURT: All right.

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THE WITNESS: What is the date of that tranaction, please? Mr. Giuliani, what is the date of that transaction?

MR.GIULIANI: I am going to get it.

THE WITNESS: Okay.

Q On August 4, 1970 you deposited $3,250 on a home?

A See in September here I take out $6,000.

Q I know that. I am asking you about the $3,250.

A I don't know.

THE COURT: We are still getting back into a dialogue. Let's just take it slowly one question at a time.

Mr. Giuliani, what is the question you want this witness to answer?

MR. GIULIANI: I think he has answered the question already, your Honor.

THE COURT: Let's go on to the next question.

MR.COSTELLO: Your Honor, the defendant Novoa is not objecting, but I would like the record to reflect the fact that Mr. Giuliani is now going into an entirely collateral matter, namely, income taxes.

MR. GIULIANI: Hardly, your Honor. This is corroboration.

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THE COURT: I am going to permit it, but let's try to stick to the orderly procedure.

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Q Now once again, referring to your income tax return (handing), tell us, if you can, whether you had deducted on your 1970 return $1,705 as expenses for the use of your car for work?

A Yes.

Q And just so that we don't have to go through all of the expenses that you list there -- that is in evidence -- I assume that the expenses that you listed on your 1970 return, namely, the business deductions, Federal income tax withheld, gasoline taxes, et cetera, et cetera -- all of that were legitimate deductions.

A Of course.

Q Now, did you maintain a charge account at Abraham & Straus?

A I certainly do and did.

Q And did you in the year 1970 spend approximately $1,535.06 at Abraham & Straus?

A I guess you are reading it from the figures, yes.

Q That sounds about right?

A I don't know, Mr. Giuliani. If it says so, I guess I did -- the monthly charge account?

Q Right.

A Yes.

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THE COURT: What is the figure?

THE WITNESS: $1000.

MR. GIULIANI: Your figure is $1,535.06, and rather than cluttering the record with it, your Honor, I will make it available to defense counsel, if I am incorrect.

THE COURT: No, Mr. Novoa, can you say whether that is right or not?

THE WITNESS: It is close. I don't make every purchase. My wife uses it. We pay every month whatever the charge is. We pay on a monthly basis.

Q Did you take a vaction in the year 1970?

A Yes.

Q Where did you go?

A Parris Island, Beaufort, South Carolina.

Q Can you tell us approximatelv -- did you tell bv car?

A The new car that I ought, yes.

Q Can you estimate for us as best you recall how much money you spent on food in the year 1970?

A It wasn't like Aguiluz's $100,000.

Q Well, was it $50,000?

A You don't spend that kind of money on food, Mr. Giuliani. How do I know? Whatever the meals were.

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Beauford, South Carolina, doesn't have too many big restaurants, that is what I can tell you.

THE COURT: Wait. Are you asking about the year 1970 or just this trip?

MR. GIULIANI: The year 1970.

THE COURT: Mr. Novoa, do you have any way of telling us how much you spent during 1970 for food?

THE WITNESS: I have no way of knowing, your Honor. I know I ate that year.

THE COURT: All right, next question.

Q Now you told us that you purchased a home in 1970?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And when did you begin -- first of all, you already told us that you put down $3,250 on that home?

A Yes.

Q Is that right?

A Yes, sir.

Q Did you put down any additional amount of money on the home?

A When I went to closing, yes, I did.

Q Was that approximately another $9000?

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A The same money -- my mother-in-law gave me, yes.

THE COURT: Well, was it $9000?

THE WITNESS: I think it might have been even ten -- I don't know. It was 12,000 was the down payment I used to get the mortgage, a 20-year mortgage.

THE COURT: So it was either nine or ten thousand dollars?

THE WITNESS: Around there.

THE COURT: All right. Next question.

Q And then you assumed a $20,000 mortgage, is that correct?

A Yes, sir.

Q And did you pay that mortgage in 1970?

A Of course.

THE COURT: I am sorry, that is rather confusing. You mean you paid it off?

THE WITNESS: No, I paid it monthly, like everybody else.

THE COURT: You mean monthly payments?

THE WITNESS: Monthly payments, right.

Q What were your monthly payments?

A $231 every month.

Q And that was in -- what month did you pay that, September, October?

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A We had discussions about buying a house so she decided to help us. She made me and my wife a gift of money.

Q All right. And is it also your testimony that she gave you the money that you used on August 4, 1970, $3,250 to deposit on your home?

A I made one other -- I made one family loan.

Q How much was that loan?

A This other loan?

Q Yes.

A From another person?

Q That is right.

A It is for $5,000 which is already a public record that I reported to the Knapp Commission.

Q I asked you before we started, Detective Novoa, if you had made any loans in 1969 or 1970 and you told us "no".

A Well, you shouldn't have read all that taxes -- because you prefaced every question about taxes, and I didn't understand what you are talking about.

THE COURT: We cannot have this.

Now, Mr. Giuliani, ask the question. The matter is perfectly relevant. You can inquire about it but let us do it one step at a time.

Now what do you want the witness to tell you?

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Q Regarding the $3,250 that you put down on your home on August 4, 1970 --

A Yes, sir.

Q -- where did you get that money?

A I believe that money I got from my mother-in-law or one other person -- I believe it was my mother-in-law.

Q And the $5,000 that you deposited in the Manufacturers Hanover Bank on August 10, 1970, where did you get that money?

A Is that the one from the teller's check?

Q No, that is the deposit in the Manufacturers Hanover Bank -- an additional deposit of $5,000 on August 10th -- the teller's check is on July 16th.

A That's -- that I believe I borrowed -- that I believe was given to me by my mother-in-law. My mother-in-law made me a gift of $12,000 over a period of time because we were going into a new house, and also I borrowed from somebody in my family $5,000.

Q And where did you get $2,000 on April 30, 1970 you used to purchase your new car?

A That is my salary.

Q That is your money?

A That is from my salary. I testified to that before.

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Q Did you earn $2,000 in any one given check?

A Mr. Giuliani, during this period --

MR. GIULIANI: Your Honor, the question is quite simple.

A -- two years back-pay had come to the New York City Police Department. Everybody in the New York City Police Department was getting back pay from old contracts that was settled. It is very confusing and very hard for me to recollect when the checks came in and in what amount they came.

I am sure all you have to do is look it up. There are times I can tell you I got a check, a salary for $1460, so when you tell me where did I get $3200 to close my house --

Q I am asking you --

A When you ask me when did I get $3200 to close my house, it is difficult for me to say whether it was entirely taken from my mother-in-law's gift or that is the time when I got that back check.

Q Now you told us that Detective Daly was your partner?

A Yes, sir.

Q Is that right?

A That is correct.

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Q How often did you split up money with Detective Peter Daly?

A I never split money up with Peter Daly or anybody else.

Q Did you have any discussion with Detective Daly prior to the time that he ran away with his family and went to Ireland?

MR. COSTELLO: Your Honor, I am not Mr. Daly's defense counsel but I think that question is outrageous.

MR. GIULIANI: Your Honor, counsel opened with some statement that Detective Daly had retired to Ireland.

MR. COSTELLO: He knows that Daly was in an automobile accident. He was represented and is represented by Jack Scofield, and he knows that.

MR. GIULIANI: And he has refused to waive extradition to come back to the United States.

MR. SCHWARTZ: Your Honor, I move for the withdrawal of a juror and the declaration of a mistrial.

MR. STONE: Simultaneously, your Honor.

THE COURT: Those motions are denied.

Now wait just a minute.

Mr. Daly admittedly is not here. Now wherever he may be, the question is, before he left this country -- forget why he left or anything about it -- before he left

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this country did the witness have some conversation with him?

MR. GIULIANI: That is right.

A Yes, I did.

Q And have you had conversations with him since he has been gone?

A He wrote me one letter from Ireland, yes.

Q Do you have that letter?

A I think it's home.

Q Did he tell you whether he had been in communication with his attorney in the United States?

MR. SCHWARTZ: Your Honor, I object to this whole line of questioning.

THE COURT: No, no. The objection is overruled.

First, though, you asked the witness -- and I felt I should intervene -- you asked the witness about a conversation with Mr. Daly before he left this country.

MR. GIULIANI: That is right.

THE COURT: Now the witness said that he did have a conversation with Mr. Daly before he left this country. All right. Then we left that subject. Then you asked him had he gotten a letter, and he said he had gotten a letter but he doesn't have it with him.

Now what is the question?

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MR. GIULIANI: There is no other question.

THE COURT: All right, then ask one. Let us go on.

The reporter suggests that we take a short recess, and I think it's a good idea.

I think we will take a recess at this time, Madam Forelady and ladies and gentlemen of the jury.

(Short recess.)

THE COURT: All right, Mr. Clerk, will you get the jury in.

(Jury in the box.)

THE COURT: All right, let us continue.

BY MR. GIULIANI:

Q Aside from thw savings account that we have talked about at the Hamilton, and the one at the Manufacturers, both opened in 1970, did you have any other savings account in 1970 -- you or your wife?

A I might have. I don't recall. In order to get the conventional loan that we secured we had a lot of bank transactions for reasons that we had to do, in order to get this conventional loan as opposed to a VHA or that type of loan.

Q In other words, in order to get the mortgage --

A Right.

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Q -- you had to have a certain amount of money in the bank?

A We had to put down 10 per cent, I think -- not 10 per cent. We wound up putting down, I think,$10,000 to be entitled to get what they call a conventional mortgage.

Q And did you, Detective Novoa, if you recall, have any other savings account other than the two that we have heard testimony about in this case?

A I might have. I don't know, because I had a lot of bank transactions during that period.

Q Did you have any other savings -- did you have any other charge account other than the charge account at A&S'?

A I had a gas card, that I remember.

Q Any other department store account?

A Not that I can recall, sir.

Q Now you told us that with regard to the testimony of Sergeant Stefania you never divided any money with him in March of 1970 at the Holiday Inn; is that correct?

A That's correct, sir.

Q Did you ever on May 11th or 12th, 1970 hand Sergeant Stefania in the bathroom 10 to $12,000?

A In the Holiday Inn bathroom where he got the bag --

Q No, with regard to the airport case --

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A Sergeant Stefania testified that you gave him 10 or $12,000 as his share of the money that the detectives were going to divide with reference to that case. Do you recall that testimony?

A I recall a lot of stories that Stefania said but I didn't give him any money.

Q Detective Lamattina then handed you $5,000 -- do you remember that testimony?

A That is correct.

Q That is funny?

A I thought it was funny when he got up here and flunked the lie detector test. I think it is very funny.

Q Did you read the exhibit closely as to how he flunked that lie detector test?

A I did not have to read it, Mr. Giulian, when I saw him come in --

THE COURT: No, no. Did you read it?

THE WITNESS: No, I didn't read it, your Honor.

THE COURT: All right, next question.

Q Did you ever demand from him or through him from Mr. Santangelo $125,000 to fix that case?

A No, sir.

Q That is not true?

A You heard the truth. You know what I told.

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Q Well, I don't know --

THE COURT: Wait, wait. It isn't true that you ever asked for $125,000 from Santangelo?

THE WITNESS: No, sir, I never asked.

THE COURT: All right, next question.

Q Although you were involved day in and day out with Detective Aguiluz and all these arrests and all this money that Detective Aguiluz was taking, you never were a part of any of that, were you?

A Stealing money, selling dope, no, I was never any part of that.

Q And in all the time you have been in the New York City Police Department you haven't taken one single solitary penny, is that right?

A That is correct, only my salary.

Q Only your salary?

A Yes.

Q And the money from your mother-in-law?

A Yes.

MR. GIULIANI: Thank you.

THE COURT: Anything else?

MR. COSTELLO: Yes, your Honor. Perhaps I can clarify some of this.

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REDIRECT EXAMINATION

BY MR. COSTELLO:

Q Joseph, Mr. Giuliani asked you a number of questions relating to some financial transactions. Correct me if I am wrong -- did you tell the jury that you received a loan from your mother-in-law, Coral's mother, in the sum of $5,000?

A Not a loan. She gave it to me.

Q An outright gift.

And was that money -- withdrawn.

And did you also receive some money, approximately $5,000 from some member of your family?

A That is correct.

Q Now did you take the moneys that you had received as outright gifts from Coral's mother, and from your family, and use that money to buy a home for your family?

A That is correct.

Q In the name of Joseph and Carol Novoa, is that correct?

A That is correct.

MR. COSTELLO: Thank you.

MR. SCHWARTZ: Your Honor, I have some questions.

THE COURT: All right, Mr. Schwartz, if you will wait just a moment.

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BY THE COURT:

Q Mr. Novoa, in the purchase of the house I have made a note here that there were two $5,000 payments, and one payment of $3,250?

A That's correct.

Q Now do I understand that one of the $5,000 payments came from Mr. Novoa's mother; one of the $5,000 payments came from a member of your family?

A It is also of my wife's family, another person.

Q Mrs. Novoa's family?

A Yes.

Q But not her mother?

A Right.

Q And what about the $3,250?

A Later on, in the closing of the house, my mother-in-law gave me the difference that I needed to close on the house.

Q And was that--

A That is the 3,000 -- it might have been an even figure of 3,000 and I put 250 to it, or she might have loaned me 3300 -- I really don't recall.

Q But it was somewhere in the neighborhood of $3,000?

A That is correct.

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Q So Mrs. Novoa's mother --

A Yes, sir.

Q -- gave you $5,000 and then roughly $3,000, and some other member of the family gave you -- of Mrs.Novoa's family gave you $5,000, and that $13,000 approximately went into the house?

A That is correct.

THE COURT: All right, thank you.

Now, Mr. Schwartz.

MR.SCHWARTZ: Thank you.

CROSS EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Novoa, if you recall there has been testimony in this case concerning activities of police officers, about arrests and processing of prisoners, et cetera.

Do you recall that testimony?

A Yes, sir.

Q I just want to review that with you, actually more for the jury's consideration than anything else.

Mr. Novoa, when you were a police officer, and after you effected the arrest of the prisoner, was it the usual procedure to take the prisoner to a station house for processing?

A Yes, sir, that is the usual procedure.

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Q And when the persons who were brought into the station house they were taken in front of the desk officer and the officer would be apprised of the nature of the charges against the particular prisoner; is that right?

A Yes, sir. We apprised the desk officer.

Q Then you would take the prisoner upstairs to what you call the squad room and you would begin to make out your report; is that right?

A That is correct.

Q Now there came a time, of course, when you would take the prisoner down to Court for an arraignment, is that right?

A Yes, sir.

Q And prior to taking the prisoner down for arraignment you would prepare certain forms, official Police Department forms which were reports of the arrest; is that correct?

A Yes, sir.

Q And in preparing those particular forms the various members of the team, if there were more than one involved, would get together and discuss from their respective points of view the nature of the particular arrest, what they saw; is that right?

A During this period we had conversations of what

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happened, yes.

Q And that would eventually be transcribed or put down on paper, is that right?

A Pertinent to the arrest on the form, right.

Q And then you would go down to the Court wih the prisoner, is that right?

A That is correct.

Q And an application would be made out, which is the sworn statement charging the prisoner with the commission of various crimes, is that right?

A That is right.

Q And in many of these cases it would eventually wind up in a prosecutor's office, is that correct? In other words, after the arraignment of the prisoner and so forth?

A Right.

Q As a matter of fact, you told us about certain meetings that you hd with a Mr. Fitzgerald, is that correct?

A Yes, sir.

Q And Mr. Fitzgerald is an Assistant District Attorney, is that correct --

A He was. I do not think he is with the office any longer.

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Q At the time he was an Assistant District Attorney?

A Yes.

Q Very much the same as Mr. Giuliani and Mr. Feld, our Assistant United States Attorneys -- in that same vein?

A Yes, I guess so.

Q Now when you would meet with these prosecutors, whether it be Mr. Fitzgerald or anybody else, would you then have discussions about the particular case that you were down on?

A Certainly.

Q And the prosecutor would put questions to you about what happened, and you would respond to him with answers, is that right?

A That is correct.

Q And many time you would have your reports there and he would have other investigative material in front of him and he would have -- just like a bull session about the case, what happened?

A That is right.

Q And you would also -- or, withdrawn.

Is it not your experience, sir, that in many instances you personally, along with other police officers were called upon to be witnesses in proceedings against various offenders, is that correct?

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A Yes, sir.

Q As a matter of fact,sometimes you were called into grand juries to give sworn testimony against particular individuals; is that right?

A Yes,sir.

Q Now prior to going into the grand jury and giving the testimony, is it fair to state, sir, that the usual practice was for you to speak to the prosecutor, to engage in conversation with the prosecutor who was presenting the case; is that correct?

A That is correct.

Q And he would ask you questions about what you were going to testify to, and you would give answers in response to those questions?

MR. GIULIANI: Objection, your Honor. All this testimony today appears to me to be absolutely irrelevant.

THE COURT: Well, you are talking about the procedure.

MR. SCHWARTZ: The procedure, that is all.

THE COURT: All right, I will permit. There is not much more of it, I take it.

MR. SCHWARTZ: No, not a great deal.

THE COURT: All right.

Q Is that correct?

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A You go over the case with him, yes.

Q And the same procedure would apply when you were getting ready for a trial in the courtroom in front of the jury, is that right?

A Yes, sir.

Q Youwould review everything, is that correct, sir?

A Usually, yes, sir.

Q And, generally speaking, the other members of that particular arrest or the other persons involved in that arrest would also be present?

A Most of the time, yes, sir.

Sometimes for some reason or other they couldn't make it, but most of the time they were there.

Q What I am asking you is the usual practice.

A The usual practice, yes.

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Q There would be discussions concerning your part in the arrest and the other persons' part in the arrest, et cetera; is that correct?

A Yes, there is.

Q Now, during any of these meetings that you had, is it fair to state, sir, that there were times when discrepancies arose in, say, a story that you had told as opposed to a story that a brother officer had told?

MR. GIULIANI: Objection, your Honor, a totally hypothetical question having nothing to do with this case.

THE COURT: Yes, I would say that.

MR. SCHWARTZ: I will withdraw the question.

THE COURT: Yes, that I think is probably a sound objection. I will sustain it.

Q You did state, however, that you were interviewed by prosecutors before you testified?

MR. GIULIANI: Objection on the additional ground that it is repetitious, your Honor.

THE COURT: He was interviewed by prosecutors in this action?

MR. SCHWARTZ: As a general matter, merely to educating people who don't know about the procedure, your Honor.

THE COURT: You are asking him if as a matter of

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practice before he testified -- what -- at a trial?

MR. SCHWARTZ: At a trial.

THE COURT: He was not interviewed?

MR. SCHWARTZ: He was interviewed.

THE COURT: All right, I will allow it. It would certainly be normal.

THE WITNESS: Usually you are interviewed by the prosecutor.

Q Getting back to the time in question, the 1970 perio of time when you were a member of the SIU, you told us that originally you were part of another team, not the Daly and Aguiluz team; is that correct?

A That is correct, sir.

Q And in your work as a police officer in undercover capacity you used informants, did you not?

A Yes, sir.

Q As a matter of fact, you had your own special informant; is that correct?

A Yes.

Q And, to your knowledge, didn't Detective Aguiluz have informants as well, his own informants?

A He led me to believe that, yes.

Q Now, you do know, as a matter of fact,that Detective Aguiluz had a brother-in-law by the name of

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Salvador Boutureira; is that correct?

A Yes, sir.

Q And you knew Salvador Boutureira at or about 1970, the period of time that is covered by this case?

A I met him, yes.

Q Did Carl Aguiluz ever tell you, to your knowledge, that Salvador Boutureira had furnished him information in connection with narcotics cases?

A Not in any specific cases, but he told me, and I remember one occasion where Sal generally would say "Jesus, some funny looking guys coming to other restaurants."

He didn'ttalk about the Madrid on this occasion, another restaurant that was on the block that he happened to see a black guy,which you didn't see too many Negroes entering or exiting these places, but he thought he saw a flashy car one day and in that vein I knew that Sal was telling Carl about any characters that were on the street.

Q As a matter of fact, he was furnishing leads to Sal, would you say about things that he saw?

A Well, not in the role that an informant that I had.

You see, I am talking about generally. Like there were occasions where a storeowner could be legally an informant if he called up the office and said "Look, there

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is nine guys on the corner falling asleep every day. They are using drugs."

But when you say informant, I am talking about an informant that you register, that goes into an apartment, he sees drugs in an apartment, he goes with undercover in the presence of undercover on some occasion, buys drugs. In that sense I didn't believe that Sal was an informant. In the other sense, in the generalities about flashy people or new people patronizing the bars in the area he did on one occasion in front of me tell Aguiluz "I saw something strange the other day."

Q During this period of time, 1970, did you also know Frank Ramos?

A I knew -- I was working on him to lock him up, yes.

Q You were actually investigating Frank Ramos?

A He and other persons in and around the Madrid, yes.

Q Did Carl Aguiluz know, as a matter of fact, you were working on Frank Ramos?

A Of course he did.

Q To your knowledge, if you know, do you know if he ever told Salvador Boutureira that you were working on Frank Ramos?

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A I don't know because we didn't have those kind of conversations with Sal.

Q I see.

A We did the listening and he did the talking.

Q In other words, what you are saying is that whenever you got together with Salvador Boutureira you would listen and Sal would tal; he would relate all of these things, various things that he saw going on; is that correct?

A Yes. I can recall at least -- we ate with him maybe three times as a team, the three team members, Daly, Aguiluz, myself. We had dinner with him in his Club Espana and besides other conversations that weren't pertinent to the police during this time, he had mentioned about after the big arrest, he had said that there is very little activity around and then later on the activity was increasing. But we never had a two-way sharing of intelligence. What we knew we kept to ourselves and we just listened to what he had to say.

Q Is it fair to state that Carl Aguiluz specifically knew that you and other members of the team were working on Frank Ramos, that he knew that?

A Of course. He was working on him, too.

Q Carl Aguiluz himself during this period of time

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was actually working on Frank Ramos?

MR. GIULIANI: Objection, your Honor, asked and answered.

MR. SCHWARTZ: I wanted to be sure.

THE COURT: I will permit it. It is repetitious, but I will allow it.

A As my partner he was with me when I was saying "We got to get this guy," and compiling other evidence against him and he was helping in details of the evidence, so I assume he was also going in the direction of helping to lock up Ramos.

Q During this period of time I'm sure that Mr. Aguiluz would be filing reports of his surveillances and work product and so forth with the Police Department as he is required; is that right?

A Yes, sir.

Q Did you hear the testimony of Carl Aguiluz when he testified?

A I certainly did hear it.

Q Did you hear Carl Aguiluz testify under oath that he permitted his brother-in-law, Salvador Boutureira, to attempt to sell the certain 5 kilos that he stole to Frank Ramos?

MR. GIULIANI: Objection. He never testified that

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he permitted his brother-in-law to sell to Frank Ramos. He said that he never knew Frank Ramos would get it.

THE COURT: Sustained as to form.

MR. GIULIANI: Absolutely mischaracterizing the testimony.

Q Did you hear Mr. Boutureira testify in this courtroom under oath?

A I certainly did.

Q Did you hear Mr. Boutureira say that he attempted to arrange to sell a stolen load of 5 kilograms to Frank Ramos?

A I heard that testimony.

Q Was there a detective by the name of Jimmy Sottile in the SIU during the period of time that you were there?

A I think this is the Sergeant Sottile that testified Jimmy Sottile.

Q Is that Jimmy Sottile, his first name is Jimmy?

A Jimmy Sottile, yes.

Q That is the sergeant that came in and testified?

A That is the guy with the sunglasses.

Q I want to ask you a question about hotels and such. There has been testimony or at least there has been a document introduced in evidence which is a paper from the Hotel Taft.

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A Yes, sir.

Q In your capacity as a police officer while you were conducting surveillances, was it unusual for you or other members of the team to acquire hotel rooms in order to make observations?

A It wasn't unusual, sir.

Q As a matter of fact, it was a practice to do that; isn't that a fact?

A Whenever we had to conduct surveillance of a suspect in a room we would attempt to get a room close by.

Q You would go to the people in the hotel --

A Explain the situation.

Q Right. Identify yourself as a police officer?

A Of course.

Q And the management, or whoever it was would say "Certainly, take this room"?

A Some hotels do that. Others don't.

Q I believe there was testimony at least on one occasion that corroborates the fact that there were observations made in the Taft Hotel.

A That is right, on the Luguizamon case.

Q During that period of time you actually acquired a room in the Taft Hotel?

A Yes, sir.

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Q Of course it is not clear who acquired it; is that correct? My recollection is that I didn't hear about the room.

A I didn't hear the testimony either. I'm not too sure. I might have asked the hotel manager.

Q You might have, Daly mighthave or Aguiluz might have?

A It had to be one of the three of us.

Q If it was in fact Daly who asked for the room and it all happened during this particular period of time, it is entirely possible that that particular piece of paper relates to Daly's request for a room?

MR. GIULIANI: Objection, your Honor.

THE COURT: Yes, sustained as to form.

MR. SCHWARTZ: I will withdraw it.

Q The Sergeant Jimmy Sottile who testified here, he was part of the SIU; is that correct?

A Yes, sir.

Q And therefore he was associated not only with yourself but with Carl Aguiluz, Peter Daly and all the other members of the SIU?

A During this period, sir, he was a detective.

Q Yes, sir?

A It is only lately he has been promoted.

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Q A detective.

A As a detective he worked with quite a few members in SIU.

Q That is what I am talking about. He did work with SIU?

A Right.

Q As you are seated on the witness chair now, do you know that the hundred kilos that you seized as a result of arresting these individuals were stolen from the property clerk's office?

A When did I find that out?

Q Do you know that?

A From the testimony and I had a suspicion before this, yes.

Q Somebody went in there and actually stole it out?

A Yes, I had a suspicion that those drugs were stolen.

Q You told us something about the procedures involved.

A Yes, sir.

Q In effect, getting the material from the Property Clerk and putting it back into the Property Clerk's office and such?

A Yes.

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Q From your total experience while you were associated with the Police Department, could an individual walk into the Property Clerk's office and withdraw evidence, assuming they knew nothing about procedure?

A I don't think -- unless he was a police officer or a civilian that worked for the Police Department that knew some of the routine, it is kind of hard for me to conceive that somebody walked in off the street and took it out.

Q In other words, just so that we understand this: When you put evidence in it is vouchered and you get a number; is that correct?

A That is correct.

Q In order for you to get the evidence out you have got to know the voucher number?

A Yes.

Q You have got to know the case number?

A That is correct.

Q You have got to fill out a paper reflecting these items; is that right?

A Yes, sir.

Q In most instances unless you are a well known detective you have got to identify yourself as to who you are and how come you want this evidence?

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A Yes, and even if you are well known you still have to fill out the papers.

Q In your basic activities as an undercover police officer, would you say that you had to assume varying, different roles of disguise?

A Well, me, personally, I never grew a beard or a mustache. I had my own personal feeling about the effectiveness of that, but there were days when I didn't shave and I dressed up dirty. I tried to be as inconspicuous as possible. I am no Serpico disguise cop with hats.

Q I understand in that kind of work, that undercover type of work, you might say the name of the game is to be clever about your activities; is that correct?

A Yes, you have to be inconspicuous while you are conducting observations and you have to -- that is the way I can best describe it. You have to be inconspicuous in the surveillance.

Q Did you hear Carl Aguiluz testify regarding the fact that he actually did infiltration work for the Police Department?

A I want to clarify your previous question. When you refer to me as undercover, it is only in that --

Q Plainclothes?

A The testimony about Aguiluz, that is a completely

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different situation. That I have never been in.

Q Could you possibly, just for the ladies and gentlemen of the jury, explain the difference between real undercover work and plainclothes?

MR. GIULIANI: Objection, your Honor.

THE COURT: That hasn't a thing in the world to do with this case. Sustained.

Q I just want to get something clear for the record: The persons who were arrested by you and other officers of the SIU in connection with this hundred kilo seizure were all apprehended, they are all actually taken into custody; is that correct?

A Yes, on the day of the arrest.

Q Placed under arrest?

A Yes.

Q Put in jail?

A Yes.

Q Many of whom were held in jail in lieu of bail; is that correct?

A Yes, they were.

Q The alleged narcotics that were seized, this hundred kilos, was actually taken into custody by police officers; right?

A That is correct.

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Q And all the other officers that were in that picture?

A Yes, sir.

Q And it was actually vouchered; is that correct?

A That is correct.

Q Actually deposited in the Property Clerk's office for safekeeping?

A That is correct.

Q So that it actually became, in effect, the property of the Police Department of the City of New York?

A Yes, sir.

MR. SCHWARTZ: No further questions.

THE COURT: Thank you.

Anything else?

MR. GIULIANI: I have no questions, your Honor.

MR. STONE: I have no questions of this witness.

MR. COSTELLO: No, your Honor.

THE COURT: All right, thank you, Mr. Novoa, you may step down.

(Witness excused.)

THE COURT: All right, next witness.

MR. COSTELLO: Defendant Novoa rests, your Honor.

THE COURT: All right, Mr. Stone.

* * * * *

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J O S E P H J A F F E, called as a witness in rebuttal by the government, being first duly sworn, testified as follows:

THE COURT: Tell me, is this testimony being offered against all three defendants or just against one or more?

MR. GIULIANI: Just against the defendant Novoa, your Honor.

THE COURT: All right. Then the jury will understand that this evidence and testimony of Mr. Jaffe is offered only as to the defendant Novoa.

DIRECT EXAMINATION

BY MR. GIULIANI:

Q Mr. Jaffe, how are you employed?

A I am an Assistant United States Attorney in the office of Paul Curran, the United States Attorney for the Southern District of New York. I am the Chief of the Official Corruptions Unit.

Q Did there come a time, Mr. Jaffe, in your capacity as Assistant United States Attorney on March 8, 1974, to interview a man named Joseph Novoa?

A Yes, there did.

Q And do you see that man in this courtroom?

A Yes. He is the gentleman at the defense table --

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MR. COSTELLO: So stipulated, your Honor.

THE COURT: All right, the identification is conceded.

Q Tell us as best as you can where you first saw Mr. Novoa.

A It was in an office at the Drug Enforcement Administration Headquarters on 57th Street. I believe the office is the office of Tom Taylor, who is the Deputy Regional Administrator.

Q Mr. Jaffe, tell us approximately how long a period of time you spent with Mr. Novoa.

A Approximately from 3.15 or 3.30 to 5.30 that afternoon, that is, March 8th.

Q During that period of time that you spoke to Mr. Novoa did he at any time ask you whether he could take a lie detector test and/or ask you whether the results of that would be printed on the front page of the Daily News --

A No, sir.

Q -- or anything to that effect?

A No, sir.

MR. GIULIANI: No further questions, your Honor.

MR. COSTELLO: May I have a moment, your Honor?

THE COURT: Of course.

(Mr. Costello confers with the defendant Novoa off the record.)

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CROSS EXAMINATION

BY MR. COSTELLO:

Q Mr. Jaffe, what was the date you told the ladies and gentlemen of the jury that you interviewed Mr. Novoa?

A I believe it was March 8th, sir.

Q Well, wasn't it the 11th, sir?

A My recollection is it was a Friday afternoon, sir, and I believe it was March 8th.

Q Mr. Jaffe, like most attorneys, do you keep a diary and make entries of activities? Do you have any notes?

A I have no notes of that interview. I do have a diary entry showing that I did interview and I was present with Mr. Novoa.

Q Does the name of attorney Carmine Perrotta mean anything to you?

A Yes, sir.

Q And Mr. Perrotta, an ex-police officer and an attorney and an expert on Article 78 -- .

MR. GIULIANI: Objection, your Honor, whether Mr. Perrotta is an expert.

MR. COSTELLO: Well, if he knows.

THE COURT: I do not see that it has anything to do with the case. He is a lawyer, isn't he?

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MR. COSTELLO: Yes.

THE COURT: All right, let us go on.

Q Incidentally, speaking about attorneys, who is the gentleman in the blue suit there -- do you recognize that gentleman (indicating)?

A I recognize there is a Walter Higgins, Jr., another Assistant United States Attorney. He is present. Do you want him pointed out, sir?

THECOURT: I thought you were talking about somebody named Perrotta.

MR. COSTELLO: Yes, your Honor.

THE COURT: All right.

MR. COSTELLO: Your Honor, is Mr. Higgins -- I would like to ask Mr. Giuliani, is Mr. Higgins going to be called as a witness? If so, I would like to ask him to leave the room. Otherwise I have no objection.

THE COURT: I don't know. Is he going to be called?

MR. GIULIANI: No, your Honor.

Q Was Mr. Higgins present at your conversation with Mr. Perrotta and Mr. Novoa?

MR. FELD: Objection.

A I had no conversations with Mr. Perrotta, sir.

Q Mr. Jaffe, when for the first time did you see

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Mr. Novoa?

A The afternoon of Friday, March 8, sir.

Q Not the 11th?

A My recollection is the afternoon of Friday, March 8th.

Q And would you tell the ladies and gentlemen of the jury where you first met Mr. Novoa?

A In the office of Tom Taylor, at the Drug Enforcement Administration.

Q Which is located in Manhattan?

A That is correct, sir.

Q Did you meet Mr. Novoa in an office there, or were you standing in the bullpen when he was brought in?

A I have no knowledge of any bullpen. I met him --

Q A jail or enclosure.

A I met Mr. Novoa in Mr. Taylor's office.

Q What did you say to Mr. Novoa and what did he say to you?

MR. GIULIANI: Your Honor, could we approach the side bar for a minute?

THE COURT: All right.

(At the side bar.)

MR. GIULIANI: Your Honor, the answer to that question, as I understand it, since I was present for some

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of it, will elicit from this witness a confession from the defendant that hewas involved in the narcotics transaction charged in this indictment and other crimes.

The government did not put him on for that purpose, did not elicit that; only for the limited purpose of rebutting his wife's testimony that he had offered to take a lie detector test and have the results published in the Daily News.

It is the government's position that -- and I should also point out to the Court that that confession, admission -- whatever it is -- was made under circumstances where the defendant had agreed to cooperate with the government and had saidthat he was seeking immunity. The government asked him -- the representatives of the government told him they couldn't possibly do that without knowing his full involvement in criminal activities, and then knowing that would see if immunity could be granted, and these admissions were made with a stipulation andan agreement with him that they would not be repeated later and they would not be held against him, if it could be worked out that he could be granted immunity. In fact, it worked out that he couldn't be granted immunity, and it seems to me that we would be creating a possible serious appellate problem now if he testified to that confession.

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THE COURT: Well, if Mr. Costello as Mr. Novoa's lawyer wants to bring it out, what problem is there for me?

MR. GIULIANI: I just want to put it on the record that the government did not bring it out, did not elicit it.

THE COURT: Of course, I understand that.

MR. COSTELLO: You just want it for the limited purpose of the Daily News?

MR. GIULIANI: Yes.

MR. COSTELLO: All right, I will withdraw it.

THE COURT: But Mr.Costello has notice of it and he can act accordingly.

MR. GIULIANI: Yes, sir.

(In open court.)

BY MR. COSTELLO:

Q Mr. Jaffe, I will withdraw the last question.

I understand you have been called solely for the limited purpose of testimony relating to a lie detector test, as testified to by Mrs. Novoa; is that correct?

A No, sir. I have no idea. I was called and asked questions and I will testify to whatever I am asked.

Q Was there any conversation with Mr. Novoa about the Daily News?

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A None that I can recall, sir.

Q Was there any conversation with Mr. Novoa about the unfairness or onesideness of certain newspaper publicity?

A There was conversation with Mr. Novoa about arrests being put in newspapers by other prosecutors. That I recall, sir.

Q And was there any conversation with Mr. Novoa relating to the importance of equal publicity for both the government and a defendant police officer?

A None that I can recall, sir.

MR. COSTELLO: I have no further questions.

THE COURT: Anything else?

MR. SCHWARTZ: Yes, your Honor.

THE COURT: Well, this is not offered as against your client.

MR. SCHWARTZ: I can still use him as a witness.

THE COURT: No, I don't think you can. You mean you want to call him as part of your case? You have rested.

MR. SCHWARTZ: I have not rested. My case is --

THE COURT: Well, why is the government putting on rebuttal when I thought you arrested?

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MR. SCHWARTZ: You reserved -- I have another witness to come yet, your Honor. I am trying to call that to your Honor's attention.

THE COURT: Are you applying to reopen your case to call Mr. Jaffe as your witness on your case?

MR. SCHWARTZ: Yes, your Honor.

THE COURT: All right, then I will grant it.

This is direct examination on the reopened case of the defendant Nieves.

MR. COSTELLO: Would your Honor instruct the jury that it has no bearing on Novoa?

THE COURT: It has nothing whatever to do with Mr. Novoa.

MR. COSTELLO: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Jaffe, in your capacity as an Assistant United States Attorney for the Southern District of New York did you present before the grand jury on March the 19th, 1974, the testimony of Mr. Frank Ramos prior to the obtaining of an indictment?

A I am not certain of the date but I did present Mr. Ramos, yes, sir.

MR. SCHWARTZ: May I have the exhibit, please?

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MR. FELD: You mean the copy of Mr. Ramos's testimony?

MR. SCHWARTZ: A copy of his testimony.

Perhaps we can stipulate that it was the 19th.

MR. FELD: I will stipulate it was March 19, 1974.

BY MR. SCHWARTZ:

Q And do you recall, sir, in the course of your examination of Mr. Ramos that you put to Mr. Ramos questions relating to the truthfulness of the testimony that he gave before the grand jury on that day?

THE COURT: Is that the grand jury testimony --

MR. GIULIANI: It is in evidence.

THE COURT: What can this witness add to it if the stenographic transcript is in evidence? Why do we have to ask him?

MR. SCHWARTZ: Your Honor, if the government is prepared to concede to the truth of that stenographic record, I won't ask another question.

THE COURT: Certainly not, certainly not. They will concede that that is an accurate transcript, I assume.

MR. GIULIANI: Yes, sir.

MR. SCHWARTZ: Well, in that case I must ask questions.

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THE COURT: I do not understand what this witness can add to the stenographic transcript.

MR. SCHWARTZ: Your Honor, without engaging in colloquy in front of the jury, I am going to state that my purpose in asking the questions of this witness is merely to bring to the jury's attention as evidence, as opposed to a transcript, the fact that questions were put to Mr. Ramos about his lack of candor in prior proceedings, and the fact that he is now in this proceeding telling the truth.

THE COURT: And aren't those questions and answers a part of the transcript in evidence?

MR. SCHWARTZ: Yes, your Honor.

THE COURT: Then you do not need to ask this witness anything more.

MR. SCHWARTZ: And I can comment on that fact to the jury.

THE COURT: Well, you can read it in summation.

MR. SCHWARTZ: Thank you.

THE COURT: You can make any argument you like. It does not add anything to the transcript, the testimony of Mr. Jaffe.

MR. SCHWARTZ: Fine. Thank you, your Honor.

I have nothing further, then.

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THE COURT: Anything else?

MR. GIULIANI: No, your Honor.

THE COURT: All right, thank you, Mr. Jaffe.

(Witness excused.)

THE COURT: All right, what is next?

MR. GIULIANI: The government has nothing else, your Honor.

THE COURT: Do the defendants have anything else except the one matter that we reserved -- the limited matter for Tuesday morning?

MR. SCHWARTZ: No, your Honor.

THE COURT: Mr. Stone?

MR. STONE: I rest again!

THE COURT: Mr.Costello?

MR.COSTELLO: I rest.

THE COURT: Now, Madam Foreman and ladies and gentlemen of the jury, except for a very limited questioning of the witness on Tuesday morning, the witness who couldn't be here this morning, we have completed the taking of evidence.

On Tuesday morning, when we have finished with this limited questioning of this one witness, then you will have the final arguments of counsel. I will then give you my instructions on the law and you will then deliberate. Until Tuesday morning -- and I think we

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t3/1 am THE COURT: All right, is there anything from the government?

MR. GIULIANI: Just one question.

CROSS EXAMINATION

BY MR. GIULIANI:

Q Can you tell us, do you recall, how many packages you, Dly and Novoa put aside?

A Yes, five packages.

MR. COSTELLO: Objection, your Honor. This is grossly improper redirect.

THE COURT: No, I will permit it.

Q And what were those packages as you recall it?

A Three kilos of heroin and two kilos of cocaine.

MR. GIULIANI: No further questions.

THE COURT: Anything else?

MR.SCHWARTZ: Yes, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Is this the first time, sir, that you have been made aware of the fact that in the Eastern District you testified to two kilos of heroin and three of cocaine?

MR. GIULIANI: Objection, your Honor.

THE COURT: No, I will permit it.

* * * * *

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UNITED STATES OF AMERICA
vs.
JOSEPH NOVOA, PETER DALY, FRANK RAMOS, DEMETRIOS PAPADAKIS, A/K/A "JIMMY PAPPAS," A/K/A "JIMMY THE GREEK," JOAQUIN NIEVES and ELISSA POSSAS. 74 Cr. 229.

New York, May 29, 1974;
9.40 A.M.

Trial resumed.

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(Jury present.)

THE COURT: Now, members of the jury, before giving you my instructions on the law this morning I will refer to a matter argued between counsel during the final summations to the jury. This matter related to the penalties faced by Boutureira, Ramos and Stefania for the offenses to which they pleaded guilty.

Now, there is no mystery about it and the penalties can be accurately stated. In the case of Boutureira and Ramos the penalty is not less than two years' imprisonment nor more than ten years' imprisonment and a fine of up to $20,000. The sentencing judge has the discretion to suspend the imposition of any sentence of imprisonment.

In the case of Stefania, the penalty is up to

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five years' imprisonment and a fine of up to $10,000 together with the cost of prosecution.

Now, there was another matter argued on yesterday. It was an exception taken to an argument of Mr. Giuliani which it was suggested in some way had the effect of shifting the burden of proof to the defendant Novoa. I do not believe that this was in fact Mr. Giuliani's suggestion or argument. Mr. Giuliani knows as well as we do the elementary rule of law that the government has the burden of proof, as you will hear in more detail in just a few minutes. But I thought that in view of the fact that we had heard something about those arguments that I would give you this explanation this morning.

Now, Madam Foreman, Ladies and Gentlemen of the Jury, we are now at the final stage of the trial. My observation has been that you have followed the testimony and other evidence with careful attention. You will remember how often I emphasized that your decision must be based solely on the evidence taken as a whole and on my instructions as to the law, and I have directed repeatedly that you should not read, see or hear about the case, and I am relying on your sense of duty and I feel sure that you have followed my instructions.

Your efforts in this trial, your patience and

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your conscientious attention to duty are all greatly appreciated. Now this case is to be submitted for your final function, and that is to decide the issues of fact in this case and of course your decision as to those fact issues determines whether your verdict as to each charge against each defendant is guilty or not guilty.

In making your decisions you act as ministers of justice and you discharge an obligation of citizenship which it is not too much to call sacred. In making your decisions you are to adopt an attitude of complete impartiality and complete fairness. You are to appraise the evidence calmly and objectively and without any bias or prejudice for or against the government or for or against any defendant.

In this connection, I should add that the fact that the government is a party and that the prosecution is brought in the name of the United States does not entitle the government or its witnesses to any greater consideration than that accorded to any other party and the witnesses for any other party. At the same time the government and its witnesses are entitled to no less consideration. All parties, government and individuals alike, stand as equals before this bar of justice.

You, ladies and gentlemen of the jury, are the sole and exclusive judges of the facts. You determine

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the weight of the evidence and the credibility of all witnesses. You decide any and all conflicts in the evidence. All differences in the evidence you resolve. You draw whatever reasonable inferences you find are justified from the facts as you may find the facts to be.

My function at this point is to give you instructions and guidance and help on the applicable law. Your duty is to accept and follow my instructions and apply them to the facts as you may find those facts to be.

Now, members of the jury, in determining what the facts are the elementary principle is that you must rely on your own recollection because it is your recollection which controls. What I might say as to any fact in these instructions or earlier at the trial or what counsel may have said as to any fact are not evidence and are not to be taken in place of your own recollection and if you have any uncertainty as to any of the testimony and if you want the stenographic minutes to be read to you as to any matters as to which you may be uncertain, simply send a note to through Madam Foreman and it will be done.

I also emphasize that questions asked a witness by counsel or by the Court are never evidence. It is only the answer which is evidence and never the question.

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If during the course of the trial a question was asked and an objection interposed and the Court sustained the objection, you should disregard the question and any alleged facts contained in it. Similarly, if the Court ruled that an answer should be stricken from the record, you should disregard both question and answer.

You are not to assume, ladies and gentlemen of the jury, that I have any opinion as to the guilt or innocence of any defendant or the truth or falsity of any of the charges. In this connection, you heard me occasionally ask questions. You are not to attribute any significance to the fact that I asked a question. The object of such questions as I may have asked was simply in an attempt to make something clearer for you and was never intended to indicate any opinion by the Court, by me.

Similarly, the fact that the Court has denied motions or granted motions in the course of the trial is not to be taken by you as any indication that any defendant is believed by the Court to be guilty or innocent. These rulings reflect matters of law with which the jury has no concern. At the same time, rulings as to the admissibility of evidence made by me during the course of the trial are not to be considered by you in any respect, and I should

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say,members of the jury, that counsel not only have a right but it is their duty to press whatever legal objections there may be to the admissibility of evidence.

I would also remind the jury that what is said between the Court and counsel the jury should disregard. In this connection, you will realize that judges are indeed human. I have been impatient from time to time with counsel. It is a fault on my part. I ask you to forgive and disregard it and certainly to draw no inference against the side to which an admonition may have been directed by the Court. Counsel for all parties have been able and devoted and their zeal on behalf of their respective clients is commendable.

Now, members of the jury, before we consider the charges in the indictment some further preliminary instructions should be given. You will recall that some persons named in the indictment are not here on trial. This has nothing whatever to do with the charges you are to consider against the defendants here on trial. You will only consider the charges submitted to you against the defendants here on trial, Mr. Novoa, Mr. Papadakis and Mr. Nieves.

There is a further preliminary instruction in this regard: Guilt is personal. The guilt or innocence

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of each defendant on trial before you, Mr. Novoa, Mr. Papadakis and Mr. Nieves, must be determined separately, solely upon the evidence or upon the lack of evidence. The case of each defendant stands or falls upon the proof or lack of proof of the charge or charges against him and not against somebody else.

The indictment, as I believe I strongly reminded the jurors when you were selected, is merely an accusation. It is a charge. It is not evidence and it is no proof of the guilt of any defendant. You should not give any weight to the fact that an indictment has been returned. The defendants have pleaded not guilty. The government has the burden of proving the charge or charges against the defendants beyond a reasonable doubt. It is a burden that never shifts and it remains upon the government throughout the trial.

A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. The presumption of innocence was in favor of each defendant when the trial began and it remains in favor of each defendant until such time, if, as and when you are satisfied that the government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. And in weighing the evidence

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to determine whether there has been proof beyond a reasonable doubt you should consider the quality and the substance of the evidence and not the quantity or the number of witnesses.

Now we come to that familiar expression "reasonable doubt." What is a reasonable doubt? We say that it is a doubt founded on reason and arising from the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully weighing the evidence. It is a doubt which is substantial and not shadowy. A reasonable doubt is one which appeals to your reason, your judgment, your common sense, your experience. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. A reasonable doubt is not a vague, speculative, imaginary doubt, but such a doubt as would cause prudent people to hesitate before acting in matters of importance to themselves.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or beyond all possible doubt. If that were the rule few men or women would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of a controverted fact which is not by its nature susceptible of proof to a mathematical certainty. In consequence, the law in a

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criminal case is that the guilt of a defendant must be established beyond a reasonable doubt and not beyond all possible doubt.

Now, members of the jury, the indictment here is based on events said to have occurred in 1970. Since then there have been some changes in the federal narcotics laws, but these are of no significance in this case. With exceptions for medicinal use, not here applicable, it was unlawful at all relevant times to import any narcotic drug into the United States. Heroin and cocaine are narcotic drugs which it was thus unlawful to import.

It was also unlawful, fraudulently or knowingly to receive, conceal, buy, sell or facilitate the transportation, concealment or sale of heroin or cocaine which has been imported into the United States knowing that such heroin or cocaine has been imported into the United States contrary to law. It was provided in the law that if a defendant is shown to have had possession of a narcotic drug, this is sufficient evidence to authorize conviction unless other evidence from any source explains the possession to the satisfaction of the jury.

The indictment here as returned by the grand jury contained 10 separate counts. A count, as I believe was explained in the beginning, is a separate section of

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an indictment charging a separate offense. For reasons with which the jury need have no concern, two of the counts, the second and third, will not be submitted to the jury. Also the 4th count, which charges the defendants Novoa, Papadakis, Nieves and others, will be submitted to the jury as against the defendant Novoa alone and not as against defendants Papadakis and Nieves.

But, ladies and gentlemen of the jury, you need not try to remember these counts because I am going to give you for your convenient use during your deliberations a copy of the indictment and also a copy of a memorandum for use in returning your verdict, so that you will be able to see precisely which counts are before you and against which defendants.

The separate charges in the indictment can be better understood if we first give a rough outline in order of time sequence of the averments in the indictment as later amplified by the government.

Defendant Novoa with Peter Daly and Carl Aguiluz were New York City Police Officers assigned to a special narcotics unit called SIU. I believe Special Investigation Unit. One or more of them, Novoa, Daly, Aguiluz, seized on April 15, 1970, a large quantity of heroin and cocaine found in an apartment on West 19th

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Street. Instead of turning over to a law-enforcement agency all of the drugs so seized, Novoa, Daly and Aguiluz kept back 5 kilograms of drugs which were later sold for their own personal profit. Salvador Boutureira, an alleged co-conspirator who can be called Sal for short, was an intermediary in the sale of the 5 kilograms as was also Frank Ramos, who was named as a defendant in this indictment but who was severed after he pleaded guilty to an information, as you heard.

I should explain that an information, like an indictment, is an accusation or charge of a criminal offense. An information is signed by the United States Attorney, whereas an indictment is returned by a grand jury. If the charge is a serious one, what is called a felony, it must be prosecuted by an indictment unless the defendant consents to the filing of an information, and Ramos consented to the filing of an information, as you heard.

Now, the defendants Papadakis and Nieves were purchasers or acting for purchasers of amounts of heroin aggregating 3 kilograms. The sales to them had been arranged through Sal Boutureira and Ramos. The 2 kilograms of cocaine were sold through Sal to Lorenzo acting either for himself or for someone else. Lorenzo was introduced to Sal by Ramos.

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Now, this is only an outline of the charges in the indictment as amplified by the government. The defendants by their pleas of not guilty have denied these charges. It is for you alone to determine whether the charges have been proved by the government beyond a reasonable doubt. I give you this outline simply as a background for your consideration of the separate counts of the indictment to which we now turn.

As I said, there will be submitted to the jury two conspiracy counts and six substantive counts. A substantive count and a conspiracy count are different in nature.

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A substantive count charges a violation of a law which condemns specific conduct as illegal; for example, in this case illegal transactions in heroin and cocaine.

A conspiracy count, on the other hand, charges an agreement between two or more persons to violate a substantive law or substantive laws. If there was such an agreement, whether or not the conspirators succeed in their objective and actually violate a substantive law is immaterial. The gist of the crime of conspiracy is the illegal agreement itself.

You may in your deliberations consider the separate counts in any order you see fit, but I believe it will be more helpful to you if I explained the six substantive counts first.

Now, Counts 5 through 10 charge the same kind of substantive offense, namely, an unlawful transaction in narcotic drugs.

Count 5 reads as follows:

"The grand jury further charges:

"On or about April 15, 1970 in the Southern District of New York Peter Daly and Joseph Novoa, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit,

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government's evidence that one kilogram of heroin was sold through Ramos to Jimmy the Greek and there was evidence, you remember, about the key to the locker in the subway station.

Now, Count 8 reads as follows:

"The grand jury further charges in or about May and June 1970 in the Southern District of New York, Peter Daly, Joseph Novoa, Frank Ramos and Joaquin Nieves, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrocholoride after said narcotics drugs had been imported and brought into the United States contrary to law knowing that the same narcotic drugs had been imported and brought into the United States contrary to law."

This count, which you will consider as to the defendants Novoa and Nieves, is related to the government's evidence that one kilogram of heroin was sold through Ramos to Nieves and there was evidence about Boutureira putting the heroin on the driver's side of his car; that Nieves took the heroin and put it in a newspaper and gave it to one of three girls sitting in the Cafe Madrid.

Count 9 reads as follows:

"The grand jury further charges:

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to law."

Now, this Count 6, which you will consider as to the defendants Novoa and Papadakis, is related to the government's evidence that one kilogram of heroin was sold through Ramos to Jimmy the Greek, Papadakis, who was with a Brazilian girl in the Cafe Madrid and thereafter there was evidence about the key to the locker in the subway station.

Now, Count 7 reads as follows:

"The grand jury further charges:

"In or about May and June, 1970 in the Southern District of New York Peter Daly, Joseph Novoa, Frank Ramos, Demetrias Papadakis, also known as Jimmy Pappas, also known as Jimmy the Greek, and Elissa Possas, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation and concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law knowing that the same narcotic drugs had been imported and brought into the United States contrary to law."

And this Count 7, which you will consider as to the defendants Novoa and Papadakis, is related to the

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five kilograms of heroin hydrochloride and cocaine hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law knowing that the said narcotic drugs had been imported and brought into the United States contrary to law."

Now, this Count, Count 5, which you consider as to the defendant Novoa is related to the government's evidence that Aguiluz, Daly and Novoa took five kilograms of drugs from a quantity seized at 210 West 19th Street and instead of turning them into the Police Department sold them through Boutureira.

Now, Count 6 reads as follows:

"The grand jury further charges:

"In or about May and June 1970, in the Southern District of New York Peter Daly, Joseph Novoa, Frank Ramos Demetrias Papadakis, also known as Jimmy Pappas, also known as Jimmy the Greek, and Elissa Possas, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell, and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately 1 kilogram of heroin hydrochloride after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary

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"In or about May and June 1970 in the Southern District of New York Peter Daly, Joseph Novoa and Frank Ramos, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law knowing that the said narcotic drugs had been imported and brought into the United States contrary to law."

Now, this Count 9 which you will consider as to the defendant Novoa is related to the government's evidence that half a kilogram of cocaine was delivered by Boutureira to Lorenzo at the Cafe Madrid after Ramos had introduced Lorenzo to Boutureira.

Now, Count 10, the last of the substantive counts, reads as follows:

"The grand jury further charges:

"In or about May and June, 1970 in the Southern District of New York, Peter Daly, Joseph Novoa and Frank Ramos, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, approximately one kilogram of cocaine

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hydrochloride after the said narcotic drug had been imported and brought into the United States contrary to law knowing that the said narcotic drugs had been imported and brought into the United States contrary to law."

This Count 10, which you will consider as to the defendant Novoa, is related to the government's evidence that after the first sale of cocaine to Lorenzo, he, Lorenzo, asked for more and according to Boutureira he, Boutureira, mistakenly delivered to Lorenzo a kilogram of cocaine instead of a half kilogram and after realizing his mistake Boutureira delivered the remaining half kilogram of cocaine to Lorenzo.

Now, members of the jury, I have related the government's evidence as to the separate counts simply to help you, the jury, as you consider the separate counts. I do not mean to imply, of course, any belief by me as to whether you should or should not accept the government's evidence. That is entirely up to you, the jury. I am simply trying to relate the evidence to the separate counts.

Now, members of the jury, Counts 5 through 10, which we have read here this morning, all involve the same principles of law. The substantive charges are based upon Sections 173 and 174 of the United States Code usually referred to as the Federal Narcotics Control Act. In

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pertinent part these sections provide as follows:

"It is unlawful to import or bring any narcotic drug into the United States except such amounts as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses. Whoever receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of any such narcotic drug, after being imported or brought in knowing the same to have been imported or brought into the United States contraryto law, shall be guilty of an offense."

You see, the statute is not limited to a sale of illegally imported narcotics. Thus it is a violation of law if one receives or conceals or buys or in any manner facilitates the transportation, concealment or sale of such drug.

Facilitate means to make easy or less difficult, to aid or assist in furthering or advancing in any meaningful way one or more of the acts prohibited by the statute.

The government does not have to prove that a defendant committed each of the condemned acts. Under each count it is sufficient if the government proves that a defendant knowingly committed any one of the prohibited acts. This means a specific intent to violate the law; that is, with a bad or evil purpose to disobey or disregard

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the law. Thus, to return a guilty verdict under each of the substantive counts, Counts 5 through 10, you must be satisfied beyond a reasonable doubt of the following there essential elements:

(1) That on or about the dates set forth therein the defendant either received or concealed or sold or in any manner facilitated the transportation, concealment or sale of heroin or cocaine, as the case may be; and

(2) That the substances dealt with were in fact narcotic drugs, either heroin or cocaine in this case.

The third essential element which you must find in order to authorize a conviction is that the heroin or cocaine was unlawfully imported into the United States and that the defendant had knowledge of such unlawful importation.

Now, it will occur to you, members of the jury, that no direct testimony has been offered by the government that any drugs were unlawfully imported or that any defendant knew of such unlawful importation.

To establish this vital element of illegal importation and knowledge on the part of the defendant, the government relies on another provision of Section 174, Title 21, which provides:

"That if a defendant is shown to have had possession

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of a narcotic drug, then such possession shall be deemed sufficient evidence to authorize conviction unless the evidence, from whatever source, explains the possession of the defendant to the satisfaction of the jury."

The jury is authorized to infer the knowledge by a defendant of the illegal importation of the narcotic drug but is also authorized not to infer such element. This means that if you should find that a defendant was in possession of heroin or cocaine you would be authorized to convict in the absence of a satisfactory explanation in the evidence provided, of course, you find the other essential elements already discussed.

The law in this connection recognizes two kinds of possession. Actual possession is one, and the other is constructive possession. One who has direct, physical control over a thing is deemed in actual possession. But the fact that one has actual or physical possession of illicit narcotics does not preclude its constructive possession by another alleged participant.

One who, although not in actual or physical possession of narcotics, exercises or has the power and the intention to exercise dominion and control of the narcotics either directly or through another person is then in constructive possession of it. Such constructive possession

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may be found to exist where one has the power to control the disposition of narcotics, to direct its delivery, to assure its delivery, to set the price, to determine the quantity to be sold.

Thus, one who has a working relationship or is sufficinetly associated in a venture with those who have physical custody of narcotics so that he is able without difficulty to cause the drug to be produced for and delivered to a customer may also be found to have constructive possession.

In general, if one has such a meaningful association ith wanother who has physical possession of the heroin and such a stake in the venture and its success that he is able to cause, direct or effect its delivery to prospective customers in consummation of a sale may be said to have constructive possession. But a casual facilitator who merely knows one who possesses or trades in haroin or cocaine but who does not have a working relationship with that principal that enables him to ensure delivery of the heroin or cocaine lacks dominion or control over it and may not be said to have constructive possession.

Now, ladies and gentlemen of the jury, we have considered Counts 5 through 10, the substantive counts. There are two conspiracy counts, 1 and 4, each submitted

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as to the defendant Novoa and I want to read those two counts to you.

Count 1 -- these are the two conspiracy counts. We have finished with the substantive counts.

"The grand jury charges:

"1. At all times relevant herein the defendants Peter Daly, and Joseph Novoa were members of the New York City Police Department, assigned to the Narcotics Bureau, Special Investigation Unit (SIU).

"2. The Bureau of Narcotics and Dangerous Drugs, known since July 1, 1973, as the Drug Enforcement Administration, at all times relvant herein was an agency of the United States Department of Justice charged with investigating violations of the criminal laws of the United States relating to narcotics.

"3. The Bureau of Customs, at all times relevant herein, was an agency of the United States Treasury Department charged with investigating violations of the criminal laws of the United States relating to narcotics, passport and visa violations.

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"4. The illegal importation into the United States of narcotic drugs and the receipt, concealment, purchase and sale, and the facilitation of the transportation, concealment, purchase and sale of narcotic drugs were, at all times relevant herein, crimes under the laws of the United States.

"Count 1: The grand jury charges:

"1. From in or about April 14, 1970, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, Joseph Novoa and Peter Daly, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the grand jury known and unknown to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the United States Department of Justice, the Bureau of Narcotics and Dangerous Drugs, and the Bureau of Customs in inveatigating and prosecuting violations of the narcotics laws of the United States and to violate Sections 173 and 174 of Title 21, United States Code, and Sections 3 and 1510 of Title 18, United

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States Code.

"2. It was part of said conspiracy that the defendants and their co-conspirators would and did agree to arrest Emilio Diaz Gonzales, also known as Alfred Picardo, Elena Risso, also known as Yolando Sarmiento, Jose Louis Mulas and Jorge Rodrigues Arraya, hereinafter the offenders, for unlawful possession of narcotics, and in connection with said arrests, to seize approximately 1200 in United States Currency, which currency was evidence of violations of the narcotics laws of the United States, and to divide such currency among the defendants and others without reporting said seizure to the New York City Police Department or to Federal law-enforcement authorities and to retain possession of approximately 5 kilograms of heroin and cocaine seized as part of a much larger quantity of contraband narcotics seized from Apartment 4-F, 210 West 19th Street, New York, New York, where said narcotics were being secreted, thereby depriving the United States Government of evidence of violations of the narcotics laws of the United States.

"3. It was further a part of said conspiracy that the defendants and their co-conspirators unlaw-

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fully, wilfully and knowingly would facilitate the transportation, concealment and sale of quantities of narcotic drugs, after the said narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

"4. It was further a part of said conspiracy that the defendants and their co-conspirators, knowing that violations of the United States narcotics laws had been committed, would relieve, comfort and assist the offenders in order to hinder and prevent their apprehension, trial and punishment.

"5. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would endeavor by means of bribery, misrepresentation, intimidation, force and threats thereof to obstruct, delay and prevent the communication of information relating to violations of the United States narcotics and immigration laws by other persons to criminal investigators.

"6. It was further a part of said conspiracy that the defendants and their co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their

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activities.

"In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

"1. On or about April 14, 1970, the defendants Peter Daly and Joseph Novoa, and others, followed the offenders from New York, New York, to Fort Lee, New Jersey.

"2. On or about April 14, 1970, the defendants Peter Daly and Joseph Novoa and others, unlawfully caused the offenders to return from Fort Lee, New Jersey, to New York, New York.

"3. On or about April 14, 1970, the defendants Peter Daly and Joseph Novoa and others took approximately $1200 from the offenders while in the 6th Precinct Stationhouse, New York, New York.

"4. On or about April 15, 1970, the defendants Peter Daly and Joseph Novoa and others conducted a search of Apartment 4-F, 210 West 19th Street.

"5. On or about April 15, 1970, the defendants Peter Daly and Joseph Novoa and others seized a large quantity of narcotic drugs in excess of 100 kilograms, the exact kind and nature to the grand jury unknown,

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from Apartment 4-F, 210 West 19th Street, Manhattan.

"6. On or about April 15, 1970, the defendant Peter Daly placed a brown valise containing approximately 5 kilograms of heroin and cocaine in a motor vehicle in the vicinity of 210 West 19th Street, New York, New York.

"7. In and around late April or May, 1970, the defendant Peter Daly had conversations with members of the SIU in which he stated he had obtained $5000 from the apartment of the aforesaid offender, Yolando Sarmiento, located in Brooklyn, New York.

"8. In and around late April, Mayand June, 1970, the defendants Peter Daly and Joseph Novoa and others had conversations among themselves and with members of the SIU in which they discussed accepting $150,000 to corruptly dispose of the criminal charges pending against the offenders.

"9. In and around May and June, 1970, the defendants Peter Daly and Joseph Novoa and others had conversations in which they agreed among themselves to sell and transfer the aforementioned 5 kilograms of heroin and cocaine.

"10. In or about May and June, 1970, the

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defendant Frank Ramos and others met with the defendants Demetrios Papadakis, also known as Jimmy Pappas, also known as Jimmy the Greek, and Elissa Possas.

"11. In and around May and June, 1970, the defendant Frank Ramos met with the defendant Joaquin Nieves.

"12. During the summer of 1970, the defendants Peter Daly and Joseph Novoa met with others and divided among themselves approximately $54,000 from the transfer and sale of the approximately 5 kilograms of heroin and cocaine."

That is the 1st count. Now the 4th count, the other conspiracy count:

"The grand jury further charges:

"1. In and about April, 1970, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, Peter Daly, Joseph Novoa, Frank Ramos, Demetrios Papadakis, also known as Jimmy Pappas, also known as Jimmy the Greek, Joanquin Nieves and Elissa Possas, the defendants, and others to the grand jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire,

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confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

"2. It was part of said conspiracy that the defendants and others to the grand jury known and unknown, unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the grand jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

"3. Among the means whereby the defendants accomplished the objectives of this conspiracy were the following:

"(a) The defendants Peter Daly and Joseph Novoa and others, under the guise of their official capacity as police officers, seized large quantities of heroin and cocaine and illegally retained in their possession approximately 5 kilograms of heroin and cocaine.

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"(b) The defendants Peter Daly and Joseph Novoa and others concealed and then transferred, and caused to be transferred, the 5 kilograms of heroin and cocaine to an intermediary.

"(c) The intermediary with the assistance of the defendant Frank Ramos sold the heroin and cocaine to the defendants Demetrios Papadakis, also known as Jimmy Pappas, also known as Jimmy the Greek, Joaquin Nieves, Elissa Poseas and others.

"Overt Acts: In furtherance of said conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere.

"1. On or about April 15, 1970, the defendants Peter Daly and Joseph Novoa and others seized over 100 kilograms of heroin and cocaine, the exact kind and nature to the grand jury unknown, from Apartment 4-F, 210 West 19th Street, New York, New York.

"2. On or about April 15, 1970, the defendant Peter Daly, in the vicinity of 210 West 19th Street, New York, New York, placed a brown valise containing approximately 5 kilograms of heroin and cocaine in a motor vehicle.

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"3. In or about May and June, 1970, the defendants Peter Daly and Joseph Novoa and others had conversations in which they agreed among themselves and with others to sell and transfer the above-mentioned narcotic drugs.

"4. In or about May and June, 1970, the defendants Frank Ramos, and others, with the defendants Demetrios Papadakis, also known as Jimmy Pappas, also known as Jimmy the Greek, and Elissa Possas.

"5. In or about July, 1970, the defendant Frank Ramos and others met with the defendant Joaquin Nieves.

"6. During the summer of 1970,the defendants Peter Daly and Joseph Novoa met in New York, New York, with others to the grand jury known and unknown and divided among themselves a total of approximately $54,000 as the illegal proceeds from the sale of the above-mentioned narcotics."

And that is the 4th count, the two conspiracy counts being count 1 and count 4.

Now, I have read you these counts, long as they are, simply so you would know what the charges in the indictment are and, remember, the charges in the indictment

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are only that and nothing more. The defendants by their plea of not guilty have denied the charges.

I think, Madam Foreman, Ladies and Gentlemen of the Jury, let's take a break for a few minutes and we will stretch our legs a little bit. You may retire to the juryroom and we will rest for a few minutes.

(The jury left the courtroom.)

THE COURT: Suppose we take a few minutes.

MR. GIULIANI: There are two things I thought maybe I might call to your attention.

THE COURT: Yes.

MR. GIULIANI: One is that in relating the evidence, when you related the evidence to count 6 you said the same thing about count 6 and count 7; that it related to the key in the subway locker. Count 6 involves, I guess, a man on a motorcycle, and count 7 involves the key in the subway locker.

MR. SCHWARTZ: That happens to be correct.

MR. GIULIANI: Do you recall that?

MR. STONE: Yes.

MR. SCHWARTZ: Yes.

Arent we better off waiting until your Honor has completed the charge?

MR. GIULIANI: These are two things you may want

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to correct before you finish. I don't know.

THE COURT: Yes, I think that count 6 is related to the man on the motorcycle and count 7 is related to the key in the subway locker.

MR. GIULIANI: That is right.

THE COURT: Are we all agreed on that?

MR. COSTELLO: Novoa agrees.

MR. STONE: Yes, I'm agreed. I am the only one concerned, I guess.

MR. GIULIANI: The other thing is that your Honor didn't charge on aiding and abetting.

THE COURT: I am not finished yet.

MR. GIULIANI: I'm sorry, your Honor.

THE COURT: I have a lot more.

MR. COSTELLO: I understand your Honor's procedure will be that you will take exceptions at the conclusion of your entire charge.

THE COURT: Yes, I will give you a chance.

MR. COSTELLO: I've got two and a half pages so far.

(Recess.)

THE COURT: All right, Mr. Clerk, will you get the jury.

(Jury present.)

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THE COURT: Now, Madam Foreman, Ladies and Gentlemen of the Jury: I think I had better go back a little bit because when I discussed with you counts 6 and 7, I think I may have been guilty of a certain amount of confusion which may have confused you. Count 6 and count 7 relate to different, separate transactions. Count 6 is related to the government's evidence about the kilogram of heroin which Boutureira says he put in the parking lot and about the man on the motorcycle in the leather jacket after the transactions in the Cafe Madrid where he said Jimmy the Greek was present.

Count 7 is related to a separate transaction entirely. Count 7 is related to the government's evidence about Boutureira putting a kilogram of heroin in a locker in a subway station and then taking the key to the locker and giving it later to Ramos for delivery to Jimmy the Greek.

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I didn't mean to confuse you but I may have, but, at any rate, you now see how the transactions are related to the counts.

Now, I have just completed reading the two conspiracy counts. Ladies and gentlemen of the jury, a conspiracy, sometimes referred to as a partnership in crime, is believed to present a greater potential threat to the public than lone, single wrongdoing. Concerted action for criminal purposes generally makes it possible to accomplish more and more important and more complex results than those which an individual acting alone could accomplish. For these and other reasons Congress enacted Section 371 of Title 18 of the United States Code which n relevant part is as follows:

"If two or more persons conspire to commit any offense against the United States and one or more such persons does any act to effect the object of the conspiracy, each shall be guilty of a criminal offense."

This is the conspiracy law which the defendant Novoa is charged with violating in Counts 1 and 4. From my reading of the conspiracy law you have heard that for a violation of the law there must not only be a conspiracy but also at least one act by one of the conspirators to effect the object of the conspiracy and this required

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act is usually called an overt act.

Conspiracy or concerted action to violate the law is thus a crime entirely separate, distinct and different from the substantive law crimes the violation of which may be the object of the conspiracy.

What must the government establish in order to prove the conspiracy charged in the first and in the fourth counts? It must prove beyond a reasonable doubt each of the following essential elements:

(1) The existence of the conspiracy charged in the first and fourth counts of the indictment.

(2) That the defendant Novoa knowingly and wilfully associated himself with that conspiracy; and

(3) That one of the conspirators knowingly committed in the Southern District of New York at least one of the overt acts set forth in the first and fourth counts of the indictment at or about the time and place alleged.

It is not required that the government prove that the conspiracy started and ended on the dates alleged in the indictment. It is sufficient that you find that in fact a conspiracy was formed and existed for some time within that period and that at least one of the overt acts was committed in furtherance of the conspiracy.

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The offense of conspiracy is complete when the unlawful agreement is made and any single overt act is thereafter knowingly committed by at least one of the co-conspirators. A conspiracy, members of the jury, is a combination or agreement of two or more persons by concerted action to accomplish a criminal or unlawful purpose.

The gist of the crime of conspiracy is the unlawful combination and agreement to violate the law. Whether or not the conspirators accomplish what it is alleged that they conspired to do is immaterial to the question of guilt or innocence of the charge of conspiracy.

A conspiracy is sometimes been called a partnership in criminal purposes in which each member becomes the agent of every other member.

To establish a conspiracy the government is not required to show that two or more persons sat around the table and entered into a solemn compact orally or in writing stating that they have formed a conspiracy to violate the law and setting forth the details of the plan and the means by which the unlawful project would be carried out or the part to be played by each conspirator. It would be most extraordinary if there ever was such a formal undertaking or formal document or specific oral agreement

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in the case of a criminal conspiracy. Your common sense will tell you that when men and women in fact undertake to enter into an unlawful conspiracy much is left to unexpressed understanding. From its very nature a conspiracy is almost invariably secret in its origin and in its execution.

It is sufficient if two or more persons in any manner through any contrivance impliedly or tacitly come to an understanding in common to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy. In determining whether there has been an unlawful agreement you may judge acts and conduct of the alleged members of the conspiracy whether named as defendants or co-conspirators which are done to carry out an apparent criminal purpose.

Usually the only evidence available is that of disconnected acts on part of the alleged individual conspirators which acts, however, when taken together in connection with each other show a conspiracy or an agreement to secure a particular result as satisfactorily and as conclusively as more direct proof.

If, for example, several persons are gathered together and shortly thereafter there was concerted action among them with each of them doing something related with

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the acts of the others all of which contributed in the same or similar manner to the accomplishment of the unlawful objective, such evidence would support the inferance that those persons had conspired together to accomplish that unlawful purpose.

You must first determine from all the evidence in the case whether or not a conspiracy as charged in the first and fourth counts of the indictment existed. You arenot to judge the character and effect of the alleged conspiracy by dismembering it and viewing its separate parts but rather by looking at it as a whole.

If you do conclude that a conspiracy as charged in the first and fourth counts did exist, you must next determine whether the defendant Novoa was a member, that is, whether he knowingly and wilfully associated himself with the conspiracy. In making this determination you should examine and consider all of the evidence in the case.

Knowingly, of course, means to act voluntarily and intentionally and not because of mistake or accident or some other such innocent reason.

Wilfully means to act knowingly, deliberately and with a bad purpose or motive. But it is not necessary that the defendant knew that he was breaking any particular specific law.

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Mere association of one defendant with an alleged conspirator or even mere knowledge of the conspiracy does not alone establish participation in the conspiracy if you find that one did exist. In determining whether the defendant Novoa was a member of the conspiracy you are to consider whether he in some sense promoted the venture himself, made it his own and had a stake in its outcome.

You will remember that I told you a moment ago that an essential element of the crime of conspiracy is that an overt act to effect the object of the conspiracy be committed by at least one of the co-conspirators after the unlawful agreement has been made.

An overt act is any step, action or conduct which is taken to achieve, accomplish or further the object of the conspiracy.

The purpose of requiring proof of an overt act is that while parties may conspire and agree to do an unlawful thing, yet they may change their minds and do nothing to carry it into effect, in which event it will not constitute an offense. The overt act need be neither a criminal act nor the very crime which is the object of the conspiracy. It does not matter either if an overt act is alleged in the indictment to have occurred on or about a certain date and you find from the testimony, if you do, that it occurred

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on another date. If you find that it occurred on or about the date specified but within the conspiracy period, this would be sufficient. The law only requires a substantial similarity between the dates alleged in the indictment and the dates mentioned in the testimony.

The guilt of a conspirator is not governed by the extent or the duration of his participation or whether he had knowledge of all the operations of the conspiracy. Thus, some conspirators may play major roles, other may play minor roles. Even if one conspirator joined the conspiracy after it was formed and was engaged to a degree more limited than that of other co-conspirators, he is equally guilty so long as he was a co-conspirator. In a word, it is not required that a person be a member of the conspiracy from its very start. He may join it at any point during its progress and be held responsible for all that has gone before he joined and all that may be done thereafter so long as he remains a member of the conspiracy.

Simply stated, and using the partnership analogy again, by becoming a partner in a criminal enterprise he assumes all the liabilities of the partnership including those that occurred before he became a member. It is not required, for example, that all conspirators know all the other members of the conspiracy. And a con-

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spiracy once formed is presumed to continue until either its object has been accomplished or there is some affirmative act of termination by its members.

Now, in this case, ladies and gentlemen of the jury, the government relies also upon another law, a law which is generally called the aiding and abetting law and this law reads in relevant part as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

This means that not only is the person who commits an illegal act, a person usually called a principal, guilty, but anyone who aids and abets him in the commission of the act is likewise guilty of committing that illegal act.

In order to find that a defendant aided or abetted another to commit the offenses charged in this indictment, you must find that a defendant in some way ascociated himself with the criminal venture; that he participated in it as something he wished to bring about; that he by his act or acts endeavored to make it succeed.

Now, Madam Foreman, ladies and gentlemen of the jury, we should say a few words about the credibility of witnesses, because an important part of your decision and deliberation will be a decision as to the credibility of

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witnesses. How do you determine whether witnesses are telling the truth? We usually say, in simple language, you use your ordinary common sense which you by no means leave behind when you come to this courtroom. As practical women and men you draw on your experience in dealing and meeting with people in your every day business and social life. You may take into consideration conflicts with the testimony of other witnesses, contradictions as to material matters, omissions and conflict with prior testimony such as that before the grand jury. The degree of credit to be given to a witness should be determined by the demeanor here, the relationship to the controversy and to the parties, the bias or impartiality, the reasonableness of the statements, the strength or weakness of recollection all viewed in the light of all other testimony and the attendant circumstances of the case.

You may consider whether any witness has any interest in the case or has any controversy with any defendant and, if so, whether this affect his credibility.

You heard the testimony of the witnesses. How did each witness impress you?

So, you take each one and on the basis of your every day experience you determine whether or not you believe the witnesses and to what extent you believe them.

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If you find that any witness has testified falsely and wilfully as to any material matter you may reject the entire testimony of that witness or you may accept such part as you believe or you may find corroborated by other evidence in the case.

Members of the jury, the law does not require a defendant to take the witness stand and testify and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify.

Now, as I have just said, the law permits but does not require a defendant to testify in his own behalf. The defendant Novoa has taken the witness stand and has testified. Obviously a defendant has a deep personal interest in the result of the prosecution.

In fact, it seems clear that he has the greatest interest of all. Interest creates a motive for false testimony. The greater the interest the stronger the motive, and the interest of the defendant in the result of his trial is of a character possessed by no other witness. In appraising his credibility you may take the fact of interest into consideration.

However, it by no means follows that simply because a person has a vital interest in the result that he is not capable of telling a straightforward or truthful

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account of events. It is for you to decide to what extent, if at all, his interest has affected or colored his testimony.

The government has called as witnesses a number of persons who admitted their involvement in matters forming the basis of one or more of the charges in this indictment. You may find that Boutureira, Ramos, Aguiluz and others are in this category and, if so, they may be considered to have been accomplices in one or more of the offenses charged against these defendants here on trial.

In the detection and prosecution of crime the government of necessity is frequently compelled to rely upon the testimony of accomplices. Often it has no choice in the matter. The government must take the witnesses to the transactions as they are. An accomplice does not become incompetent as a witness because of participation in the criminal act charged. If accomplices could not be used in many instances it would be difficult to detect and prosecute wrongdoers and this is particularly true in a conspiracy case.

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Frequently it happens that only those who participate have evidence which is relevant and important in a case if the prosecution is to succeed. There is no requirement in the Federal Court that the testimony of an accomplice be corroborated. A conviction may rest upon the uncorroborated testimony of an accomplice if you find it credible and believable.

If you find that any government witness was an accomplice this may be considered by you as bearing upon his credibility. However, it does not follow that because a person has acknowledged participation in a crime or is an accomplice that he is not capable of giving a truthful version of what occurred. His testimony should be viewed with great caution, however, and scrutinized carefully.

You will consider, for example, whether the testimony of an accomplice was inspired by any motive of self-interest, personal advantage or hostility to a defendant so that he gave false or colored testimony against him. You will consider whether the testimony of any of these witnesses was a fabrication induced by a belief or a hope or an expectation that they will receive favorable consideration either in not being indicted or otherwise and whether their testimony was a fabrication induced by

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promises of immunity or other benefit, or you may consider whether these witnesses bared themselves publicly before you, made a clean breastof their wrongdoing and told the truth. In short, did they decide, after being caught, to come clean and tell the truth?

If you find that the testimony of any of these accomplices was deliberately untruthful you should reject it. On the other hand, if you upon a cautious and careful consideration are satisfied that these witnesses have given a truthful version and that the government has sustained its burden of proof in all other respects, then you have sufficient proof upon which to bring in a verdict of guilty.

Now, Madam Foreman, Ladies and Gentlemen of the Jury, at long last we have reached the conclusion. I want to say that each of you jurors is entitled to his or her own opinion. You should, however, exchange views amongst yourselves, each with his or her fellow jurors. That is the very purpose of jury deliberation, to consider and discuss the evidence.

Listen to the arguments of your fellow jurors. Present your individual views. Consult with one another to reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

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Each one must decide the case for himself or herself after consideration with your fellow jurors of the evidence in the case, but you should not hesitate to change an opinion which after discussion with your fellow jurors appears to be mistaken in the light of the discussion viewed against the evidence and the law.

However, if after carefully considering all the evidence and the arguments of your fellow jurors you entertain a conscientious view that differs from the others you are not to yield your conviction simply because you are outnumbered or outweighed. Your final vote must reflect your conscientious conviction as to how the issue should be decided.

Any verdict, ladies and gentlemen, must be unanimous, that is as to each defendant and on each count the verdict must be unanimous. The jury is not to consider or in any way to speculate about the punishment which a defendant may receive if he is found guilty. Under your oath as jurors you cannot allow a consideration of the punishment which may be imposed upon a defendant if he is convicted to influence your verdict in any way or in any sense to enter into your deliberations. The function of a jury is to determine the guilt or innocence of each defendant on the basis of the evidence and on my instructions.

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It is the judge, the judge alone, the Court, who has the duty of determining the sentence if there is a conviction.

The charges here, ladies and gentlemen, are most serious. The just determination of this case is important to the public. It is equally important to each of these three defendants. Under your oath as jurors you must decide this case without fear or favor and solely, as I have stated repeatedly, in accordance with the evidence and the law. If the government has failed to carry its burden as to any count or counts as to a defendant, your sworn duty is to bring in a verdict of not guilty on such count or counts. If the government has carried its burden as to any count or counts as to a defendant, you must not flinch from your sworn duty, but you must bring in a verdict of guilty on such count or counts.

The guilt or innocence of the defendants is for you and you alone to determine. The government to prevail must prove the essential elements as I explained them by the required degree of proof. If it succeeds, your verdict must be guilty. If it fails, your verdict must be not guilty. The case of each defendant must be considered separately as if he alone were on trial.

In order to assist you in your deliberations, especially in your separate consideration of each count

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and each defendant, I am giving the Madam Foreman a copy of the indictment. You will bear in mind, of course, that the indictment is only an accusation. It is not evidence and is being given to you solely for the reasons stated.

Now, I am also giving to Madam Foreman a form to be used simply as a guide for returning your verdict on each count. This form is not to be signed. It is only for your convenient use. Your verdict will be returned orally by Madam Foreman in open court and it goes without saying that this form is not intended to and should not in any way influence your verdict.

If during your deliberations you wish to see any of the exhibits, Madam Foreman should send a note through the marshal and we will send in the requested exhibits to you.

As I mentioned earlier this morning, if you wish any testimony read to you likewise send a note through the marshal. Your request will be considered and arrangementswill be made.

Now, Madam Foreman, Ladies and Gentlemen of the Jury, I beg a few minutes of further patience from you. I want to speak with counsel about any last-minutequestions of law in the robing room and we will be back in just a moment. I would like to ask you to wait patiently in the jurybox while I complete this last consideration going

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over law points with counsel and the reporter in the robing room.

(In the robing room.)

MR. STONE: Your Honor, Mr. Costello has no objection to my going first. I have a sentence to attend.

THE COURT: Has the government any requests?

MR GIULIANI: Your Honor, just one. The government relies not only on the presumption with regard to Mr. Novoa but also on the direct knowledge from the fact that the packages were wrapped in a South American newspaper, but if your Honor isn't going to give any further requests I don't think that is really all that important.

THE COURT: Mr. Stone.

MR. STONE: I except to your charge concerning the reading of the overt actswhere the defendant Papadakis was named. I felt that since the conspiracy count had been dismissed the jury should not have heard the overt acts and they shouldn't have been part of the consideration. I would ask for a corrective instruction as to that, that is, the overt acts read as to count 4.

Further, I would request an instruction that even though the indictment as to the conspiracy charges either heroin or cocaine, it should be further emphasized that the government is charging Papadakis solely with the

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sale or the purchase of heroin, and if the jury finds it was not heroin they have an obligation to acquit.

Further, I think giving the jury the total indictment without eliminating Papadakis's name from the conspiracy is unfair to the defendant Papadakis.

Mr. Schwartz and I have discussed other things and he will cover for me for a short period of time.

THE COURT: Mr. Schwartz.

MR. SCHWARTZ: Of course I join in everything that Mr. Stone has said with regard to the conspiracy count as it directly applies to Mr. Nieves.

Your Honor, I think and I know it is not an easy situation because of the fact that your Honor finds himself with an indictment that actually charges two separate and distinct conspiracies, both now involving the same individual, Joseph Novoa. Nevertheless, we also have a defendant, and since your Honor has told this jury the guilt or innocence is personal as to each individual defendant, I think the time has come for your Honor to make clear to the jury that as to, again, Papadakis and Nieves, they have nothing whatsoever to do with this conspiracy count at all, and that it wholly and solely concerns, at least for the jury's deliberation, Mr. Novoa. Again I have to say that the references to Papadakis and to

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Nieves in the overt acts or even as named as co-conspirators in light of your Honor's ruling is substantially prejudicial to this jury's determination of the substantive counts with regard to these defendants.

Your Honor, could you hear from Mr.Costello? I don't want to hold you up. Let me Mr.Costello go ahead. I just want to check on what I have further.

MR. COSTELLO: Your Honor, I have approximately three pages of 8-1/2 x 11 notebook paper. If I may, I would just like to read them off, and to keep our record tidy, the defendant Novoa has not submitted any request for charge. He feels that he cannot submit requests for charge, as he indicated earlier, because of the People's failure to comply with what we consider to be their legal duty in regard to a bill of particulars and Brady material as referred to in our motion which is reflected by the People's responding papers and your Honor's decision of, I believe, April 29, 1974, with the amendment thereto.

Initially, your Honor, my first objection is something that I feel sure is dramatically correct, but during the course of your charge to the jury you indicated they were police officers. Detective Novoa is still a police officer. I wouldn't want the jury to get the impression he had been fired from the job.

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MR. GIULIANI: He has been suspended. It is a semantic difference. He is not functioning as a police officer.

THE COURT: I didn't intend to --

MR. COSTELLO: I know you didn't.

THE COURT: What can I say?

MR. COSTELLO: That Detective Novoa is still a New York City police officer.

MR. GIULIANI: Who is under suspension.

MR. COSTELLO: I wouldn't tell them unless it is necessary.

MR. GIULIANI: The addendum happens to be necessary.

MR. COSTELLO: Is it necessary or is it prejudicial?

MR. GIULIANI: The jury would get the impression that he is out there functioningon the street as a police officer when the Police Department has made the determination that he is suspended from functioning on the street as a police officer.

MR. COSTELLO: It is my understanding that Mr. Novoa has not had a hearingby the Police Department.

MR. GIULIANI: He is suspended. His gun and badge have been taken away. He does not function as a

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police officer and it would be unfair to give that impression.

MR. COSTELLO: But he hasn't had a hearing.

THE COURT: Don't you really think that if I acceded to your suggestion and said something to the jury about it I would really be magnifying its importance?

MR. COSTELLO: It is a good point. I won't press it. We can let that go. I am just reading off the notes.

THE COURT: Yes.

MR. COSTELLO: I thought you said in explaining the indictment where references were made to Detectives Novoa and Daly it was stated affirmatively but when references were made to sell Boutureira used properly the term alleged: it is alleged that he did such and such and so on. I ask, if possible, that that correction be made.

The next point, your Honor, in referring to, I believe, counts 5 through 10, the substantive counts, your Honor referred to the fact certain alleged conduct between Novoa and Jimmy the Greek. If my recollection is correct, your Honor, there is no evidence that Detective Novoa ever conspired with Jimmy the Greek or had any contact with Jimmy the Greek.

The second point, your Honor, is referring back

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to earlier motions, I request your Honor to take judicial notice of the fact that Detective Novoa, I understand, actually arrested and helped convict Joaquin Nieves in New York State Supreme Court. But this, of course, could not be brought out during the course of the trial. Your Honor ruled quite properly that the laws of evidence preclude any reference to a man's criminal conviction unless he takes the stand, and I was precluded from going into that on direct examination or redirect of Mr. Novoa because of that clear rule of evidence.

I bring that out because again, your Honor, defendant Novoa had moved under Rule 14 of the Federal Rules of Criminal Procedure for a severance on the grounds of prejudicial misjoinder in anticipation of just some of the problems that I am now enumerating and of course as reflected in our earlier papers.

The next point, your Honor, is that your Honor made reference to -- and I forget the exact terminology -- tying Detective Novoa in with drugs delivered to this man Lorenzo Cancio, but there was no evidence offered of any connection between Lorenzo Cancio and Mr. Novoa and in fact the government's witness Ramos had said that he did not know --

THE COURT: Mr. Costello, I don't think that I

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said anything about Novoa and Cancio --

MR. COSTELLO: I have it this way, your Honor: in referring, I think, to count 9 you said there were drugs delivered to Lorenzo Cancio.

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THE COURT: I said "This count which you will consider as to defendant Novoa" -- that is only because he is the defendant that they are considering -- "is related to the government's evidence that half a kilogram of cocaine was delivered by Boutureira to Lorenzo at the Cafe Madrid after Ramos had introduced Lorenzo to Boutureira."

I didn't suggest that Novoa had anything to do with it.

MR. COSTELLO: I am glad I misunderstood that.

THE COURT: The same as to Count 10.

MR. COSTELLO: Yes. All right.

The other point, your Honor, under the two conspiracy counts -- I think the reference to Count No. 1, again -- I direct your Honor's attention to the fact that the defendant Novoa reserved all motions and then, after all sides had rested, defendant Novoa had moved for the dismissal of the indictment and for the permission of the Court in the nature of a blanket motion rather than directing it to specific paragraphs, at which time, if recollection serves me correctly, the Court advised me that the government had indicated they were going to sever Counts 2 and 3, as I remember, and I submit that within the context of the development of the facts being given to the jury it is prejudicial to Novoa to have severed those --

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THE COURT: I have eliminated Counts 2 and 3 from the copy of the indictment that I have given to the jury.

MR. COSTELLO: You have done that?

THE COURT: Counts 2 and 3 do not appear there.

MR. COSTELLO: They are eliminated?

THE COURT: Yes.

MR. COSTELLO: I withdraw that, your Honor.

This is something that is very, very subjective. I have noticed that your Honor very carefully kept his head down and very carefully tried to keep your voice at an even keel so there wouldn't be any vocal intonations that might suggest an opinion one way or another, but Mr. Hoyos had the impression that in the Court's summary of the overt acts that there was an inadvertent vocal intonation, we'll say, that the government may have proved these. This is subjective and it is very, very difficult to do and I'm sure if that did occur it was completely inadvertent.

MR. GIULIANI: I had no such impression. I just want the record to be clear on the fact that I had no such impression.

MR. SCHWARTZ: I don't think Mr. Stone did either.

MR. GIULIANI: Did you?

MR. SCHWARTZ: I didn't even hear it.

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MR. COSTELLO: I am speaking only for Novoa.

THE COURT: I certainly didn't mean to indicate any opinion.

MR. COSTELLO: I know you didn't. I think I made that very clear in my prefatory remarks.

Count 4, your Honor -- again it is coming up -- I hate to repeat it, but in that conspiracy count, with a special reference to Joaquin Nieves, your client, Mr. Schwartz -- that again, your Honor, under Count 4 they conspired to violate Sections 173 and 174. Again it was actually, as I understand it, that Detective Novoa actually arrested Mr. Schwartz' client and convicted Mr. Schwartz' client and of course none of that could be brought out.

Your Honor has corrected that error in regard to the subway locker and the motorcycle. I think that would be all for defendant Novoa.

THE COURT: All right.

MR. SCHWARTZ: Before we go back in, your Honor, first of all, and just for the record, part of the reason that we had moved for a severance was primarily because not only the prejudicial spill-over from the conspiracies which we believed from the very beginning we were not involved in, but the very prejudicial nature of having to be in the same trial with Joseph Novoa. I am not going into the matters

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underlying it. Nevertheless, I think it is clear from previous applications that we made and previous discussions we had with the government of the United States that it was the defendant Nieves' position, and it remains his position, that Mr. Novoa had done acts which might be categorized as nothing short of shocking in the state court, but nevertheless we felt under a restriction sitting here and we could not be casting the finger of accusation so as to prejudice a defendant that we were forced to trial with by virtue of the way this indictment was drawn.

I must say to your Honor that I would ask your Honor on behalf of both myself in behalf of Mr. Nieves and in behalf of Mr. Papadakis to seriously look at the fact that in each one of these substantive counts an aiding and abetting charge was given in a situation where your Honor has ruled that as to the conspiracy counts regarding each of these defendants there is in law not a conspiracy.

In the aiding and abetting consideration the jury has to carry over an association which of necessity must have existed before Mr. Novoa and Mr. Papadakis and Mr. Nieves respectively. That in turn is almost a spill-over and in effect charging through the back door the existence of a conspiracy when there is no conspiracy, and I say that in this case aiding and abetting as a matter of law should never have been charged.

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With regard to the government's contention about wrapping and so forth, I don't think that the evidence is clear and I do think that their references to it came in directly as a result of the portion of the trial when they were claiming that it was limited -- this is another thing I know your Honor is aware of -- certain evidence in this trial was limited wholly and solely to those allegations concerning the defendant Novoa. I just except to that because it is inherently prejudicial against Mr. Papadakis and Mr. Nieves where the jury by your Honor's own instruction has to make determinations as to importaion and so forth from the evidence as it relates to them and as to the inferences as your Honor charges them.

THE COURT: All right.

MR. GIULIANI: There is one other thing I recall which I will bring to your Honor's attention. I think your Honor should make clear to the jury -- I have forgotten the name of the decision in the Second Circuit -- the fact that the guilty pleas you referred to are not evidence except to the extent that they were questioned about and came in in this trial.

Am I right, Mr. Schwartz?

MR. SCHWARTZ: I don't know about the decision. I have no reason to quarrel with Mr. Giuliani's statement

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as far as the law is concerned.

THE COURT: You are suggesting that I tell the jury that the guilty pleas --

MR. GIULIANI: The guilty pleas are not evidence except to the extent that they were questioned about and inquired about at this trial.

THE COURT: What guilty pleas are we talking about?

MR. GIULIANI: I guess we have Ramos, Boutureira and Stefania.

MR. COSTELLO: How about Aquiluz, did he plead?

MR. GIULIANI: Aquiluz did not plead guilty. The point is that the pleas of guilty of Boutureira, Stefania and Ramos are not evidence except to the extent that they were questioned about and inquired about at the trial.

MR.SCHWARTZ: Your plea of guilty is equivalent to a conviction after trial.

MR. GIULIANI: If you don't want that instruction I am willing to withdraw my request for it.

THE COURT: I am going to leave the charge as it is. All it will do is just get the jury more confused.

MR. COSTELLO: Your Honor made reference to the fact that the defendant Novoa does not have to take the stand

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but when the defendant Novoa took the stand -- your Honor then went into an explanation of interest, the interest of a defendant. Is my recollection correct that you did not refer to the interest of Aguiluz and Stefania?

MR. GIULIANI: You reffered to the interest of all the witnesses, your Honor.

THE COURT: I gave a general charge on interest.

MR. COSTELLO: I was just wondering -- do you think there was sufficient balance on the question of interest?

THE COURT: I am perfectly prepared to tell the jury again in determining the credibility of witnesses they can consider the fact of the interest of all witnesses.

MR.COSTELLO: I would certainly appreciate that. Would your Honor tell the jury affirmatively that Aguiluz has not yet pled? Does he have immunity?

MR. GIULIANI: Mr. Costello, he does not have immunity. No witness in the case has immunity.

THE COURT: I don't think I can give an instruction at thislate date that wouldn't be more confusing than anything else, except about interest.

MR. SCHWARTZ: There is one other thing, your Honor. First of all, I think that it is clear that at the time of the taking of the pleas, at least those that were

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taken in front of your Honor, that the government specifically and in front of each defendant stated that the cooperation of these defendants would be at least made known to the Court at the time of sentencing and I think that is important for the jury to know in the true context of the entire taking of the plea. I know that your Honor didn't bind himself to any sentence, that was clear, but nevertheless the cooperation factor was made a part of the record and, your Honor, because of the rulings, both on behalf of myself and Mr. Stone I must then enter an exception to the entire charge that is, in view of your Honor's ruling that he will not go back and instruct the jury in connection with the exceptions that we have just taken here.

I do that for both myself and for Mr. Stone in behalf of Mr. Papadakis and Mr. Nieves and of course without pinpointing each and every part of the charge where we would contend and surely believe that we can establish the facts are such that as given constitute prejudicial spilling-over with regard to both the defendant Papadakis and with regard to the defendant Nieves and I ask your Honor to consider his ruling in law dismissing the conspiracy count with regard to each of these people and the attendant rulings that would follow therefrom.

THE COURT: All right. Let's go out.

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(In open court; jury present.)

THE COURT: Madam Foreman, ladies and gentlemen of the jury, one matter I believe I made perfectly clear but just in case I may not have made clear, I discussed with you, you remember, the credibility of witnesses and I referred specifically to one of the factors which could be considered in that and that is the fact of interest of any witness, if the jury finds that the witness has an interest. The jury can take that into account as a factor, just one of the factors affecting the jury's determination of credibility, and that extends to all witnesses.

Now we come to the time when we must part company with our alternate jurors, Mr. Olsen and Mrs. Berman. The members of the jury have remained in good health and no emergencies have arisen, but the alternate jurors, I hope, realize that they have performed their function, which is most important.

It is an assurance against having to stop and start the trial all over again if we didn't alternate jurors.

Fortunately no juror has had to be excused.

So, Mr. Olsen and Mrs. Berman, we will excuse you now with the thanks of the Court.

What are their instructions?

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THE CLERK: If you will go to Room 109 you will receive your certificates of service.

THE COURT: We will excuse you. You may go to the jury room, take your things and leave. Thank you very much for your service.

Mr. Clerk, will you swear the marshals.

(Marshals sworn.)

THE COURT: All right, Madam Foreman, ladies and gentlemen of the jury, the matter is submitted to you. You may retire to the jury room with the marshals.

(The jury left the courtroom at 11:55 a.m.)

THE COURT: Let me give counsel a copy of the memorandum that I gave the foreman of the jury.

MR. COSTELLO: Is it all right for me to speak now?

THE COURT: Of course.

MR. COSTELLO: Your Honor, the defendant Novoa most respectfully excepts to the document entitled "Memorandum for the Jury on Verdict" for pretty much the same reasons advanced in the robing room, your Honor, as stated earlier. We anticipated many of the problems that have arisen and the defendant Novoa moves for a severance under Rule 14 of the Criminal Rules of Procedure and in this document, your Honor, there is an additional

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ground as to terminology with regard to the continuing presumption of innocence. The typist at all points as to all ten counts interjected the word "guilty" first so that it reads "Guilty or not guilty," and I think that it is probably suggestive. I think the better order would have been "Not guilty or guilty," and, your Honor, referring back to the prejudicial joinder, under Count 6, the defendant Novoa is joined with defendant Papadakis, under Count 7 defendant Novoa is joined with defendant Papadakis; and under Count 8 defendant Novoa is joined with defendant Nieves whereas, as was indicated, it was Detective Novoa who arrested Mr. Nieves and I understand testified against him in the state proceeding, and I understand that proceeding resulted in a conviction and it was impossible for Mr. Novoa to assert this phase of his defense within the context of the indictment where it is alleged that he gave aid and comfort to the co-conspirators.

Will you note my exception?

THE COURT: I understand your point, but I believe that this memorandum is accurate if I am going to submit these counts to the jury. I haven't committed an error in stating which counts relates to which defendants?

MR. COSTELLO: To the best of my knowledge, your Honor has not.

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THE COURT: And as to the form, "Guilty or not guilty," I have been using this form of memorandum for a good many years and frankly it never occurred to me that there was anything suggestive.

MR. COSTELLO: As an old trial man and as a lover of our mother tongue I'm sure you can appreciate the importance of language, the psychological suggestion inherent in all the language, and the jury is told, quite properly, about the continuing presumption of innocence, the continuing burden of proof which never shifts, and in the last thing they see from the king of the law is a check sheet, so to speak, where the first word appearing is guilty instead of not guilty and I think that inadvertently it is strongly suggestive and in that regard prejudicial and inimical to the best interests of the defendant Novoa.

THE COURT: Mr. Costello, one of my standard form of words, though, is to tell them that this memorandum is simply for their convenient use and the form is not intended nor should it in any way influence their verdict.

MR. COSTELLO: As soon as I heard your Honor say that, and as I'm sure your Honor shared with me a great admiration for the late Professor Hohfeld, I thought I am going to look at this very carefully within the juror relationship and the semantics aspects.

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THE COURT: I will take your points in mind and see if I can improve it for the next case.

All right, Mr. Clerk, would you mark this as the next Court exhibit.

(Court Exhibit 5 was marked.)

THE COURT: We will await the pleasure of the jury.

MR. SCHWARTZ: Your Honor, primarily again because of the objections made in front of your Honor inside, I wish to take exception not to the use of the words guilty or not guilty or the semantics but again primarily to the fact that Mr. Nieves in Count 8 is joined at least by name with Mr. Novoa and I say to your Honor that all of the prejudice inherent in that with what your Honor already knows and what we discussed in the robing room places and continues to place us in an untenable position and I say through our joinder in this case with Joseph Novoa is substantially prejudicial to our being able to present the facts because it is our contention that, and the record can be clear on it, Mr. Nieves was a victim of a frame in which Mr. Novoa and others participated.

THE COURT: All right. We will await the pleasure of the jury.

(Recess.)

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(The following occurred at 2:35 p.m.)

THE COURT: We have a note from the jury. The jury says, as I read it:

"Aguiluz testimony and cross examination."

Maybe counsel will take a look at it. It seems like "cross examination" to me.

MR. COSTELLO: I'm sure it is, your Honor. Absolutely,your Honor.

MR. GIULIANI: Yes, sir.

THE COURT: I propose to bring the jury out. There is about 300 pages of testimony. It will take two or three hours to read it.

MR. COSTELLO: May I have a five-minute break, then, your Honor?

THE COURT: You mean before we bring the jury in?

MR. COSTELLO : Yes, sir.

MR. SCHWARTZ: I was going to ask your Honor for ten minutes to go down to Judge Pollack, handle a brief application and come right back here.

THE COURT: All right.

(Recess.)

MR.STONE: I assume this only affects Novoa if they only want Aguiluz.

MR. GIULIANI: Do you think it would be possible

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to ask them if they want anything in particular? They may want something in particular and this way we wouldn't waste two or three hours.

MR.STONE: Could we agree to one lawyer covering the other in the reading of testimony and answering notes?

THE COURT: I think so, but I told Mr. Costello he couldhave a few minutes and I don't want to start without him.

All right, Mr. Clerk, would you get the jury?

MR. COSTELLO: Thank you, your Honor.

THE COURT: Not at all.

MR. COSTELLO: I understand my friend, Mr. Giuliani, made an application.

As I understand it, Mr. Giuliani wants specificity.

THE COURT: I didn't treat it as an application.

MR. COSTELLO: I understood the jury's note to indicate they wanted all the direct and cross.

THE COURT: I showed it to you.

MR. COSTELLO: Yes, sir. That is what I read. I am just wondering if I read it correctly.

THE COURT: Here it is.

MR. COSTELLO: Thank you. I read it "Aguiluz testimony and cross examination," and it is signed by what appears to be the name Martha Hernandez.

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Defendant Novoa not only consents but requests that the Court comply with the jury's demand for the entire direct and cross.

THE COURT: I am going to read it and I am going to tell the jury that if the foreman thinks the jury has heard enough she can raise her hand and I will then poll the jury and ask them if they want to hear anything more, and if they don't we won't have anything more.

MR. COSTELLO: I don't think we should restrict it to that. She is the vehicle for the jury, the forelady, and she has said what the jury wants. I don't think we should place any halters or any restrictions whatsoever. The time is not of essence when we are dealing with the freedom and reputation of a human being.

THE COURT: I agree.

MR. COSTELLO: Thank you, your Honor.

(Jury present at 2:50 p.m.)

MR.COSTELLO: Your Honor, may we have the doors secured as in the Judge's charge so the jury would not be distracted in the reading of the minutes?

THE COURT: All right.

MR. COSTELLO: Thank you, your Honor.

THE COURT: Now, members of the jury, your first note states "Aguiluz testimony and cross examination."

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We have the reporter and my law clerk here. The reporter will read the question and my law clerk will read the answer of the witness Aguiluz.

I have another note which I will deal with after we finish this.

Now, in reading the testimony of the defendant Aguiluz we are prepared to read every bit and there is no restrictions on the amount of testimony of Aguiluz. All of it can be read, but if by any chance the foreman of the jury thinks that the jury has heard enough, if you will raise your hand I can then ask if any members of the jury want to hear more.

Now, remember, there is no restriction at all on the testimony thatyou can hear. We are prepared to read it all.

All right, Mr. Reporter.

(Record read.)

THE COURT: Does any member of the jury want to hear more?

THE FOREMAN: We would like to hear the part where they purchased the five kilos and how it was distributed.

JUROR NO. 2: The conversation in the apartment on West 19th Street from where the narcotics were dis-

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covered and the events that led after the discovery.

THE COURT: All right, we will see if we can find that.

(Discussion off the record at the side bar.)

THE COURT: Members of the jury, I think we have located the portion of the transcript of the testimony of Aguiluz that you have indicated you want to hear and we will begin with that portion.

Again, if we get to a point where the foreman thinks the jury has heard what it wanted to hear, you just let us know and we will be governed accordingly.

(Record read.)

THE COURT: You think the jury has heard all the jury wants to hear? Because, as I say, we are prepared to read as much as you want.

We have your second note:

"We want the Judge to have the instructions to the jury reread with respect to the three factual criteria for determination on substantive counts (all three or one of the three?)"

I believe that this question relates to the three essential elements for returning a guilty verdict on each of the substantive counts, that is Counts 5, through 10, and I told the jury this morning, and I repeat it now,

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that to return a guilty verdict under each of the substantive counts you must be satisfied beyond a reasonable doubt of the following three essential elements:

1. That on or about the dates set forth in the count the defendant either received or concealed or sold or in any manner facilitated the transportation, concealment or sale of heroin or cocaine, as the case may be.

2. That the substances dealt with were in fact either heroin or cocaine, and while there doesn't appear to be much dispute about that since it is an essential element of the offense, you must so find; and

3. That the heroin or cocaine, as the case may be, was unlawfully imported into the United States and that the defendant had knowledge of such unlawful importation.

And I then pointed out that no direct testimony had been offered by the government that any drugs were unlawfully imported but the government, I may add, relies on certain circumstantial evidence that the drugs were unlawfully imported such as, and this is simply by way of example, the wrapping of the packages in newspapers from South America. But no direct evidence had been offered by the government that the drugs were unlawfully imported

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such as, and this is simply by way of example, the wrapping of the packages in newspapers from South America.

But no direct evidence had been offered by the government that the drugs were unlawfully imported or that any defendant knew of such unlawful importation, and I pointed out that to establish this final element of illegal importation and knowledge on the part of a defendant the government relied upon another provision of Section 174 of Title 21 which provides:

That if a defendant is shown to have had possession of a narcotic drug, then such possession shall be deemed sufficient evidence to authorize conviction unless the evidence from whatever source explains the possession of the defendant to the satisfaction of the jury."

The jury is authorized to infer the knowledge by a defendant of the illegal importation of the narcotic drug, but it is also equally authorized not to infer such element.

Then the second part of the second note asks "Read Title 18, United States Code, Section 2."

Now, members of the jury, Section 2 of Title 18 of the United States Code is the aiding and abetting law which I explained this morning. I did not refer, I don't believe, to the fact that it was specifically Section 2

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of Title 18, but the aiding and abetting law, which is part of Section 2, reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal," and, in substance, this means that not only is the person who commits the illegal act, a person usually called the principal, guilty, but anyone who aids and abets him in the commission of the act is likewise guilty under the section of the law that I just read.

I think we have dealt with your questions and the jury may retire to the jury room and resume your deliberations. Thank you.

(Jury left the courtroom at 3:25 p.m.)

THE COURT: Yes, Mr. Costello?

MR. COSTELLO: I will repeat what I said earlier, your Honor, that the jurors' note spoke for itself. The initial note demanded the direct and the cross examination of the government's witness Aquiluz and I will repeat what I indicated, your Honor, that I think it would be improper to even indirectly suggest that perhaps there was some reason for not complying with the jury's request.

THE COURT: I think I made it perfectly clear that we were prepared to sit here as long as any juror wanted

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to hear testimony.

MR. COSTELLO: I know what your Honor said, but I think that it was unnecessary, and I most respectfully submit, an improper addendum or comment in view of the jury's clear and unequivocal request.

It is late in the day. It is now, if I read the courtroom clock correctly, 3:30. We are all to a degree fatigued. Everybody has worked very hard and I am sure your Honor didn't mean it, but it was suggestive that perhaps their desire to explore all aspects of the facts was perhaps unnecessary. I think that it was unintentional, of course, but nevertheless improper comment.

THE COURT: All right.

Now, Mr. Clerk,will you mark the first note of the jury as Court Exhibit 6.

(Court Exhibit 6 was marked.)

THE COURT: When the jury was brought in by the marshal and was being seated in the box the marshal handed me the second note of the jury, so I never had a chance to read it to counsel or consult with counsel about answering, but it seemed to me that since the questions permitted a rather ready answer I ought to go ahead and deal with it.

But, of course, counsel may certainly have access

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to the notes. It will be marked as the next court exhibit and will be available for the inspection of counsel.

(Court Exhibit 7 was marked.)

MR. COSTELLO: Your Honor, at this time I would like the government to make available, should it be called for, the one memorandum book that the government said they have in their possession belonging to Detective Novoa.

THE COURT: What really is the purpose of this? The taking of evidence is completed, isn't it?

MR. COSTELLO: Yes, your Honor, but if you will remember during the course of the trial Mr. Giuliani gave it to me and in order to obviate any possibility of mistakes I returned it to him every evening. You will remember comments by various counsel about papers getting mixed up, which happened to all of us. Mr. Giuliani said he had no recollection of my returning it to him. I am sure that he did not have any recollection. However, Mr. Novoa recalls it because when I handed the noteboc back -- all of this is academic because Mr. Giuliani has now found it.

I would just like to have him secure that so that certain things will be readily available.

THE COURT: All right, we will continue to await the ladies and gentlemen of the jury.

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(Recess.)

(The following occurred at 4:30 p.m.:)

THE COURT: I have a note from the jury which reads as follows:

"We would like to see all of the following. May we have all of the exhibits for the prosectuion and for each of the defendants. May we have the exhibit of questions asked of Lamattina when he flunked the lie detector test? May we review all exhibits presented?"

Do we have the exhibits?

MR. FELD: Yes.

MR. COSTELLO: These are defendant Novoa's exhibits, your Honor, all in this envelope.

At this point, your Honor, I should like to make the following observation: That defendant Novoa wanted to introduce his memorandum book into evidence and I believe, your Honor, that at my request Detective Novoa's memorandum book UF 16 had been marked as Exhibit D of Defendant Joseph Novoa.

When I attempted to offer it in evidence or present it to Mr. Novoa as he was on the stand, as I recall it, your Honor, Mr. Giuliani said that he did not have it and to the best of his recollection, and I am sure it was an honest mistake; Mr. Giuliani expressed the opinion that I had

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had it, at which time Mr. Novoa pointed out that he recalled he, Mr. Novoa, recalled my returning it with Mr. Giuliani because he, Mr. Novoa, recalled that the front page of the exhibit had become disengaged and he handed it to me and I in turn handed it to Mr. Giuliani.

At any rate, it could not be presented at that time.

This afternoon, your Honor, in regard to the jury's last question it was pointed out, your Honor, that the government did in fact have Exhibit D, Detective Novoa's memo book, and I think, your Honor, that in the interests of substantial justice and in compliance with the applicable law enunciated by the Supreme Court of the United States in Brady v. Maryland that Detective Novoa's memorandum book should at this time be given to the jury with an explanation.

THE COURT: If it has not been admitted in evidence, I can't give it to the jury.

MR. COSTELLO: Under ordinary circumstances, your Honor, I would not even suggest such an application to a judge who is not only as experienced a trial judge as your Honor but as great a trial lawyer as your Honor was while at the bar. However, I have carefully delineated the distinguishable factors in this case so that

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evidence within the custody and control of the government was not available to the defense at the time and I think if there is any doubt we might have that colloquy between counsel reread. I am sure that under the pressure of trial Mr. Giuliani made a mistake and it was somewhere in the shopping basket and he could not find it and Mr. Feld could not find it. I'm sure it was an accident. I am not attributing any bad motive or evil intent to them, but I think in the interests of substantial justice on the facts of the case and what I think might even be almost a stipulation of facts that it should now go to the jury, partiuclarly in view of their request as contained in the court exhibit, your Honor, and more fully appears from Exhibits 6 and 7, within the context of the facts and the applicable law.

THE COURT: Where are the government's exhibits?

MR.FELD: Here, your Honor.

MR. COSTELLO: With regard to the lie detector test, I want everything to go in on that. You remember there was some colloquy on that. There are certain addendums to it.

MR. FELD: This is your exhibit.

MR.COSTELLO: This is page 2 only. I want the letter and the other materials that were going in. That

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is why I did not at that time physically examine and Mr. Giuliani said he would not give me that, but there is a letter, as I recall, the two other pages and --

MR. FELD: I don't think that is in evidence.

MR.COSTELLO: It is very clearly labelled page 2. Will you show that to his Honor, please? There is other material and there is a fundamental rule of evidence that if one part goes in the whole goes in.

MR.FELD: Not after the jury is out deliberating, we don't add ot it.

MR. COSTELLO: The interests of substantial justice prevails, Mr. Feld.

THE COURT: I have received from the government Exhibits 1 through 20 and they all seem to have been marked in evidence.

Now, will counsel for the defendants look at them just so we can be sure that we are agreed on them.

MR.SCHWARTZ: May the record indicate that for this part of the proceeding I am appearing both for Mr. Nieves and for Mr. Papadakis.

THE COURT: All right.

MR. SCHWARTZ: Of course I would like to join in everything that happened while Mr. Stone was appearing for me and whatever applications or motions that Mr.

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Costello has made.

THE COURT: All right.

(Pause.)

MR. SCHWARTZ: While your Honor is looking at those papers up there which are obviously the defendants' exhibits, I would like to call to your Honor's attention a ruling made, and I am hoping that those papers conform with it, in one of the grand jury records that were part of the defendants' exhibits. I am not sure if it is the grand jury testimony of Mr. Ramos. I believe it is Mr. Ramos' grand jury testimony of March 19, 1974. Your Honor ordered expunged from that part of the grand jury testimony all references with regard to Mr. Nieves as to some other matters which were not before the jury. I wonder if that was done.

MR. COSTELLO: That, your Honor, I expunged with Mr. Schwartz and our good court clerk and I believe the record will reflect that which I understand is before your Honor.

THE COURT: Now we are dealing with the defendant Novoa's exhibits.

MR.COSTELLO: Will you bear with me a moment, your Honor, until I get my index?

THE COURT: Yes.

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Can we go on? I have defendant Novoa's Exhibits A, B, C, E, F, G and I. I have Exhibit H for the defendant Novoa but it does not seem to have been admitted in evidence. I will return that to counsel.

Am I correct?

MR. COSTELLO: There also, your Honor, is Exhibit I which I introduced into evidence which is the New Jersey Police Department report.

THE COURT: Yes, I have that.

MR.COSTELLO: I'm sorry, I didn't hear you say it.

THE COURT: All right.

MR.COSTELLO: I wanted this in evidence but the government objected to it, Exhibit H for identification.

THE COURT: I'm afraid, then, it is not received in evidence.

MR.COSTELLO: Let us return, if I may, sir --

THE COURT: Do I have the government's exhibits?

MR. FELD: I will hand them up again, your Honor.

THE COURT: Now I have Defendant Papadakis Exhibits A, B, C and F. I have Exhibits E and D which appear not to have been admitted in evidence. I will return that to counsel.

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MR.COSTELLO: Is that Papadakis, your Honor?

THE COURT: Yes.

So for Papadakis I have A, B, C and F.

Does the defendant Nieves have any exhibits?

MR. SCHWARTZ: I think that we joined in some of the offers that were made by Mr. Costello and also some of the offers that were made by Mr. Papadakis. They were joint offers.

Other than that I don't know of any. May I examine those, your Honor, just to be sure, since Mr. Stone isn't here?

THE COURT: Yes.

(Pause.)

MR. SCHWARTZ: Would your Honor grant us permission to place a phone call through to Mr. Stone?

THE COURT: All right.

(Pause.)

MR.SCHWARTZ: This is exactly what I was afraid of. The references are not expunged from this exhibit.

MR.GIULIANI: Whose testimony is that?

MR.SCHWARTZ: Frank Ramos of March 19, 1974. It begins at page 61 and it is just a portion of page 61 as far as I can see.

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Why is it that we are unable to go on? I have the government's exhibits. Where are the Papadakis exhibits?

MR. SCHWARTZ: They are right here.

THE COURT: Let's have them. If the Papadakis exhibits are not forthcoming they simply won't be sent to the jury, that is all. I am not spending any more time.

MR. SCHWARTZ: The problem is that in light of your Honor's ruling the necessary material has not been expunged from those exhibits and so the jury is going to get material in connection with a case involving Mr. Nieves that this jury has nothing to do with and your Honor had ruled to that effect.

THE COURT: That is right, and I personally deleted it.

MR. SCHWARTZ: The exhibit has it on there.

THE COURT: I tell you it is deleted. The exhibit is Defendant Novoa Exhibit B and at EJC 52 the blank spaces are the deletions which I personally did.

MR. SCHWARTZ: I agree with you. The problem is that Mr. Stone introduced the same exhibit and there is a similar reference in that exhibit, unfortunately.

MR.FELD: It is different.

MR. COSTELLO: The defendant Novoa doesn't know

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anything about that, your Honor. We expunged what your Honor told us to. I worked it out with Mr. Giuliani and I think Mr. Schwartz.

THE COURT: Papadakis Exhibits A, B, C and F are here. What is the matter with them?

MR. SCHWARTZ: In the March 19 grand jury testimony of Mr. Ramos reference is made to the existence or an alleged transaction which is outside the scope of this indictment and not before this jury.

THE COURT: Why didn't somebody bring it to my attention?

MR. SCHWARTZ: I didn't know anything about it until we saw the exhibit.

MR. GIULIANI: Why don't we then just hold on to that exhibit, send all the rest of them in and fix up what we have to. We will send in everything else but that exhibit and we will fix that up.

MR. COSTELLO: Defendant Novoa has no objection, your Honor.

THE COURT: What is it that is the matter with this exhibit of Papadakis? We have got to resolve this.

MR. SCHWARTZ: The matter, very simply, is this: there is testimonygiven by Mr. Ramos before the grand jury regarding a cocaine transaction allegedly had with Mr.

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Nieves. That is the same point that was expunged from the Aguiluz grand jury testimony.

THE COURT: Let's just cut it out physically.

MR. COSTELLO: Your Honor, when this matter is resolved I would appreciate your entertaining my application.

THE COURT: All right.

MR. SCHWARTZ: It is only from line 6 down to line 21.

THE COURT: Take a pair of scissors and cut it out.

MR. SCHWARTZ: All right.

(Pause.)

THE COURT: All right, I have Papadakis A, B, C and F.

Now the unfinished business about the memorandum book of Mr. Novoa. I don't think there is a thing in the world I can do about it.

MR. COSTELLO: Would you let me refresh your recollection as to the following at page 1127, starting at line 13, and I am asking this question, your Honor:

"Q Would you indicate the approximate date that you and Detective Daly became partners?"

"Incidentally, your Honor, if they now have the UF 16 of Detective Novoa I would like to allow him to

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refresh his recollection as to any dates.

"May I have them, Mr. Giuliani?

"Mr. Giuliani: Your Honor, I am not even quite sure what the UF 16 is, but whatever I have of Detective Novoa's has already been turned over to Mr. Costello long ago.

"Mr. Costello: You have one memo book, Mr. Giuliani. May I have it?

"(Pause.)

"The Court: Can we go on, please?

"Mr. Costello: All right, your Honor.

"Q Joseph, could you tell the ladies and gentlemen while they are looking for your memo book --

"Mr. Costello: Mr. Feld, I see you have some memo books here.

"Mr. Feld: Would you like them?

"Mr. Costello: I am asking you, sir, are they Detective Novoa's memo books, Mr. Feld?

"Mr. Feld: That is what I am trying to find out.

"The Court: Can we settle this point?

"Mr. Giuliani: These are Detective Aguiluz's memo books, your Honor.

"The Court: All right, the Novoa books have already been turned over.

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"Mr. Giuliani: We turned over one memo book, the one that we had from Mr. Costello last week.

"The Court: And you don't have any more?

"Mr. Giuliani: We don't have any more.

"Mr. Costello: I returned that memo book to Mr. Giuliani since it was partof his material.

"The Court: He says he doesn't have it.

"Q Tell the ladies and gentlemen of the jury to the best of your recollection the approximate date that you and Detective Daly became a team and started working together."

And then he goes on to indicate, your Honor, -- Detective Novoa's answer appears on page 1129 and his answer is: "And I believe it is reflected on the memo book."

A moment ago, sir, I asked Mr. Feld for the memo book and he produced it. I think in the interests of substantial justice this must now be given to the jury.

THE COURT: I cannot give an exhibit to the jury which has not been received in evidence. All right.

MR. COSTELLO: Just to perfect the record, I could not make an offer if it wasn't available because it wasn't in my control but in the government's control. I am not suggesting there was anything sinister in their not having

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it there. However, the fact is that they did not have it there. It was just returned today. The jury is asking for information germane to the issues and in the interests of substantial justice I request your Honor to request the government under the doctrine of Brady vs. Maryland to stipulate that this should go in to the jury as part of Brady material.

THE COURT: All right, will you give these exhibits to the marshal?

MR. COSTELLO: Could you rule on my application, sir?

THE COURT: The application is denied. I simply cannot at the stage when the case has been given to the jury for its deliberation reopen the matter and admit evidence. The time for taking evidence has gone by. I'm sorry. It is just one of those things in the course of a trial that didn't apparently get taken care of, but I can't do anything about it.

MR. COSTELLO: The interests of justice does not permit us, any of us, to exalt form over substance and the fact is there is absolutely nothing I could do if documentary evidence which was in the exclusive custody and control of the government was not made available to me.

THE COURT: I think, Mr. Costello, you could

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have asked me to adjourn the trial until you got it. There were all sorts of things that we could have done, but I can't turn back the clock now.

MR. COSTELLO: You indicated the duties of an administrative judge. Every day you have graciously told the jury and counsel and the defendants for planning purposes what time they must be in court, what time we might expect to adjourn in order so that all people might prepare for it. I was certainly in no position to make that application and I further, most respectfully, submit that I was under no duty to do so because the duty was incumbent upon the people to produce that in accordance with Brady vs. Maryland.

MR. GIULIANI: Mr. Costello had this available to him. It was turned over to him. He made that one reference to it during the trial. He never again after that asked for it. He never made a motion for it. There were many days that passed since then and he has never done anything about submitting it in evidence until now, after the case is over.

MR. COSTELLO: As an old trial man your Honor knows the advisability of keeping one's own counsel, being, if you will. I do not make it a practice to tell strangers or adversaries what my trial strategy is.

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As set forth under our laws, the duty is incumbent upon the people, which is what I am relying upon. My trial strategy, my plans are solely within the province of James Lee Raymond Costello and I am under no duty to divulge them to anybody.

THE COURT: I am sorry that it has turned out the way it has, but I know of no procedure which I can admit at this late date a new exhibit in evidence.

Mr. Clerk, will you mark this note from the jury as the next Court's exhibit.

(Court's Exhibit 8 marked.)

THE COURT: Will you mark as the next Court exhibit the material which was excised from the defendant Papadakis exhibit in response to Mr.Schwartz's point.

(Court's Exhibit 9 marked.)

THE COURT: We will continue to wait on the jury.

(Recess to 6.20 p.m.)

THE COURT: My normal practice is at this time to send the jury home and bring them back on the following morning to resume their deliberations. I thought that I would consider that with counsel and, of course, you remember that we have a problem with a juror and I am wondering if I shouldn't talk to that juror now to see what the juror's commitment is so that I can form some idea about when to

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bring the jury back tomorrow.

Does anybody have any ideas about that?

MR. GIULIANI: I have no objection to your talking to that juror, your Honor.

MR. SCHWARTZ: Under ordinary circumstances I don't think I would have an objection, except that since I am here now ostensibly representing both Mr. Nieves and Mr. Papadakis, I would have to object to any conversations at this time with any individual juror, the jury having already been sent in to deliberate, and I would say to your Honor that we know that the juror has a commitment tomorrow. We know it is a serious thing, and we are all aware that your Honor might have to send this juror home to come back at a much later time that they would ordinarily or maybe pass tomorrow altogether, and I think that we should discuss it from that point of view. I don't think I could consent to it.

THE COURT: Isn't the sensible thing for me to do to ask the lady herself?

MR. COSTELLO: May I be heard, your Honor?

THE COURT: Of course.

MR.COSTELLO: I think, your Honor, that once the entire jury has the case for their consideration and deliberation I am inclined to go along completely with Mr.

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Schwartz. It is a matter akin to a family matter, that we all have to discuss it. If your Honor wishes to discuss it first with her in your robing room with all counsel present and then advise the jury, fine. We don't want to invade the lady's privacy. We don't want to add to her sorrow or enhance her grief. If anything, we want to ameliorate her situation. I think we ought to apprise the entire jury as to the reason any provision is being made beyond what has been described as the normal adjournment or normal resumption time.

MR. GIULIANI: Your Honor, the government for the record has absolutely no objection to your talking to her and finding out what her situation is. I think that probably is the most sensible way of handling the situation.

Further, the government would ask that if as a result of that discussion or for whatever reason you decide that the jury cannot come back tomorrow morning to deliberate, that we keep them longer this evening so that we don't have their deliberation broken up by what would be a very, very long delay. I think we are dealing with a somewhat unusual situation given the fact that she has to go to a funeral tomorrow. In light of that, since the deliberations would be delayed at least for the morning or possibly the entire day, the government would ask that

the jury be kept later tonight than you normally would, and that we make some arrangements for getting them home, which has been done before.

MR. COSTELLO: I think that all of us share Mr. Giuliani's sincere wish to move the case along as expeditiously as possible and I individually and in behalf of Mr. Novoa am in complete accord with your Honor. I have complete and absolute confidence in the American people. I think to send them back now would be almost akin or subject to a possible interpretation of directing the jury to bring in a verdict. I know that is the last thing in the world your Honor would ever do, so I think we might recess for the evening and let them resume at whatever time your Honor deems convenient within the context of this situation.

THE COURT: The only trouble with that, Mr. Costello, is that unless I ask this lady what is the time when she has to be at the funeral, and then we are in the dark.

MR. COSTELLO: I thought we had agreed on that.

MR. SCHWARTZ: As long as all parties are present so that it has the appearance of being a unanimous situation, not favoring anybody or against anybody else, I have no quarrel with that, as long as we are all there.

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THE COURT: Why don't we do it in open court?

MR. COSTELLO: That is what I suggested, something like a family gathering. We are all in this.

THE COURT: I would explain to them normally that for many reasons we don't keep juries deliberating until late in the evening and it is better for them to get a night's rest and come back, but we have this --

MR. COSTELLO: Special problem.

THE COURT: -- special problem. I just have to discuss that in the presence of the jury with this lady.

MR. COSTELLO: I think that is a splendid idea.

THE COURT: All right, Mr. Clerk, would you bring the jury in.

(Jury present at 6.25 p.m.)

THE COURT: Madam Foreman, Members of the Jury, we have asked you to return to the courtroom because according to my normal practice I excuse jurors at this hour for the evening. We think it better that juries are not kept here until late in the evening. We think it better that the jury in deliberating get a good night's rest and come back to their deliberations with freshness.

On the other hand, we have a special situation tomorrow. I remember the sorrow that came in your life. At what time could you conveniently come? Could you come

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in the morning and be excused in the afternoon or could you come in the afternoon if we excuse the jury in the morning?

JUROR NO. 2: The services are due for 9.30. He is being buried out at Pinelawn, Long Island. I couldn't give you an estimate of how long it would take me to get out there and return. I would say one o'clock.

THE COURT: You could be here at one o'clock?

JUROR NO. 2: I would think so.

THE COURT: All right, then, Madam Foreman, Ladies and Gentlemen of the Jury: I am going to excuse you until one o'clock tomorrow. Just leave the papers, the exhibits, the memorandum, the indictment with the marshal. It will be here for your study tomorrow. If we can meet at one o'clock, then you can resume your deliberations having had the advantage of a night's rest and sleep.

Of course, at this solemn moment you won't discuss the case with anybody except the members of the jury when you are all together, all twelve assembled at one o'clock tomorrow.

MR. SCHWARTZ: Could we approach the bench now?

THE COURT: All right.

(At the side bar.)

MR. SCHWARTZ: Your Honor, do you think it would

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be wise to allow them to have an opportunity to have some lunch?

THE COURT: What is the consensus?

MR. STONE: Before we ask that, my suggestion is asking them whether they have reached any verdict on any count and whether this is agreeable with them to do this.

MR. GIULIANI: I would not agree. I think that you should ask them if they would prefer to stay and finish this evening.

MR. STONE: Ask them if they have a partial verdict on any count on any defendant. If they haven't, then of course there is no question.

THE COURT: No, I don't want to do that.

MR. STONE: Or maybe one or two defendants are no longer a part of the case.

THE COURT: Do you want me to ask them?

MR. SCHWARTZ: I merely came up here to suggest lunch.

MR. COSTELLO: No, your Honor.

THE COURT: As between one o'clock and two o'clock?

MR. STONE: Can't your Honor ask whether they have a verdict on any defendant?

THE COURT: I don't think so.

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MR. GIULIANI: Could the government just once again plead with you to keep them longer tonight?

MR. STONE: I would join in that.

(In open court.)

THE COURT: The question for discussion is whether it would be more convenient for the jury if you were asked to come at 2 o'clock instead of 1 o'clock. Do you have any opinion, Madam Foreman, whether the jury would prefer 2 o'clock or 1 o'clock? Would it make it any easier for you?

THE FORELADY: 1 o'clock would be fine.

THE COURT: All right, then, we will meet at 1 o'clock tomorrow until which time you are excused. Thank you very much.

(The jury left the courtroom.)

THE COURT: Mr. Clerk, will you ask the marshal to take custody of the papers so we will have them.

You realize that when I don't accept all the suggestions that are pressed upon me it is not because the suggestions are not worthy, but, as you can appreciate, I can't satisfy and please everybody and in that situation I just have to do the best I can, and we walked the mine field I think successfully in getting over this engagement of one of the jurors tomorrow and we will just see what

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UNITED STATES OF AMERICA
vs.
JOSEPH NOVOA, PETER DALY, FRANK RAMOS, DEMETRIOS PAPADAKIS, A/K/A "JIMMY PAPPAS," A/K/A "JIMMY THE GREEK," JOAQUIN NIEVES and ELISSA POSSAS.

74 Cr. 229

New York, May 31, 1974;
9.30 A.M.

Trial resumed.

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(At 10.05 A.M. the following proceedings took place in the courtroom, in the absence of the jury.)

THE COURT: We have a note from the jury. This gives me certain problems. I will read it to you:

"We would like to have the law defined as to charges 6-10.

"1. If we believe he took the money.

"2. If we believe he knew about the narcotics.

"3. If we do not believe that he had control of the sales.

"4. What does control mean?"

So you will have to excuse me for a little while and allow me to ponder this matter; then I will come back and discuss it with you.

MR. COSTELLO: Your Honor, is this an inquiry with regard to Mr. Novoa or Mr. Papadakis or both?

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THE COURT: I don't know.

MR. COSTELLO: Oh, I am sorry.

THE COURT: I believe that I would have to -- there is only one count now, and that is Count 7 in which any other defendant is named than Mr. Novoa,and on Count 7 I think I will have to assume that they are asking about both of them; but I will have to try to draft an answer on this, and I will come back as soon as I can.

MR. STONE: Your Honor, why not make a further inquiry as to whether they are asking about both defendants?

THE COURT: No, I will assume it is as to both.

MR. COSTELLO: Is it too premature for me to make an application about something else, or do you prefer to wait until you complete this business?

THE COURT: I would prefer to wait until I have disposed of the jury's note, then I will trv to give you a chance, Mr. Costello.

MR. COSTELLO: All right. Mr. Giuliani and I have discussed certain aspects -- we can wait.

THE COURT: All right, I will be back just as soon as I can.

(Short recess.)

THE COURT: Mr. Novoa, I am sorry to hear about the sorrow that has come to your family.

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DEFENDANT NOVOA: Thank you.

THE COURT: And of course I am prepared to excuse you for some reasonable length of time. How long would you like?

MR.COSTELLO: Your Honor, Mr. Novoa --

THE COURT: Can he be reached through you if he is required?

MR. COSTELLO: Yes, he said he would leave me a number, your Honor.

THE COURT: All right. Then, Mr. Giuliani, why don't we excuse Mr. Novoa?

The record should show that the reason for this excuse is the death last evening, as I understand it, of Mr. Novoa's uncle to whom he has been attached and he wants to be excused. The government has no objection, and the defendant having waived his right to be present at various stages of the trial, I assume you do make that waiver, Mr. Novoa?

DEFENDANT NOVOA: Yes, I do.

THE COURT: So I will excuse you.

DEFENDANT NOVOA: Thank you very much.

MR. GIULIANI: I take it that he is waiving his right to be present at the verdict.

DEFENDANT NOVOA: That is correct.

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(Defendant Novoa leaves the courtroom.)

THE COURT: Now, Mr. Clerk, would you get the jury in, please. I am ready to give these instructions. I am sorry to have taken so long without discussing it with counsel, but I will give you a chance to take exception to them.

(Jury in the box at 10.45 a.m.)

THE COURT: Good morning, ladies and gentlemen of the jury.

JURORS: Good morning.

THE COURT: In answer to your last question, I think I ought to begin by reading again the basic narcotics law as follows:

"Whoever *** receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law ***"

shall be guilty of an offense.

The statute is not limited to the sale of illegally imported narcotics.

It is also a violation of the law if one receives, or conceals, or buys, or in any manner facilitates the

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transportation, concealment or sale of any such drug.

Facilitate means to make easy or less difficult; to aid or assist in furthering or advancing in a meaningful way one or more of the acts prohibited under the statute.

The government also does not have to prove that a defendant committed each of the condemned acts.

Under each count, 6 to 10, about which you inquired, it is sufficient that the government prove that a defendant knowingly committed any one of the prohibited acts.

Now the government also, as to counts 6 to 10, relies on a law which I referred to as the aiding and abetting law, which reads as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

This means that not only is the person who commits an illegal act, the person usually called a principal, guilty, but anyone who aids and abets him in the commission of the act is likewise guilty of committing that criminal act.

In order to find that a defendant aided or abetted another to commit the offenses charged in these

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counts, you must find that the defendant in some way associated himself with the criminal venture, that he participated in it as something which he wished to bring about, that he by his act or acts endeavored to make it succeed.

Participation by a defendant in a criminal venture may be shown by any act designed to promote or further the criminal venture, even of relatively slight importance, which you find was committed by a defendant.

But to find a defendant guilty of aiding and abetting you must find something more than mere knowledge on his part that the crime was being committed, since a mere spectactor at a crime is not a participant. It is not necessary, however, to find that he himself did any of the acts, since participation in the crime can, for example, be shown if you find that he counseled another person to commit the crime.

In determining whether a defendant participated in a criminal venture, you may consider whether that defendant had any stake in the venture, since financial interest in the outcome of a crime is significant as to motive.

Now with that as background, we turn to your questions, introduced by the words "We would like to have

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the law defined as to charges 6-10."

The first question reads:

"If we believe he took the money."

I think that this question relates to what I just said about a financial interest of a defendant in the outcome of a crime.

If you believe that a defendant received money as a result of a crime, you may consider this as bearing on his motive in determining whether he aided and abetted the crime.

If he did not receive any money, he could still be found by you, in your view of the evidence, to be guilty of aiding and abetting the crime.

If he did receive money from the crime, this is simply other evidence to be considered by you in determining whether he aided and abetted the crime.

Your second question reads as follows:

"If we believe he knew about the narcotics."

Here again, knowledge of the narcotics under Counts 6 through 10 is evidence to be considered in determining whether a defendant aided and abetted an illegal transaction.

Under the evidence here, if you believe that a defendant had no knowledgewhatever about narcotic drugs,

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he should not be found guilty; but if you believe that a defendant aided in making available narcotics for sale, then the fact that he did not know of specific sales would not be relevant to his guilt or innocence.

I am going to take up next your fourth question, which reads:

"What does control mean?"

"Control" means to exercise restraining or directing influence over, to regulate, to dominate, to rule, to have power over."

Now I turn to the third question which involves the word "control."

The third question reads:

"If we do notbelieve that he had control of the sales."

This may refer to control of specific sales, which I think has been covered by what I just said, that is, if you are satisfied from all the evidence beyond a reasonable doubt that a defendant aided and abetted in making available a quantity of narcotics for sale, then the fact that he did not control or have knowledge of specific sales would be irrelevant to the question of his guilt or innocence.

But your question may refer to the question of

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possession in connectionwith the inference from possession, which I explained in my instructions as to illegal importation, and, of course, as I may have said before, the government relies on evidence of illegal importation aside from the question of inference. But the law recognizes -- and I am covering possession in caseyour question relates to that -- the law recognizes two kinds of possession: actual possession is one, and the other is constructive possession.

One who has direct, physical control over a thing is deemed to haveactual possession. But the fact that one has actual or physical possession of narcotics does not mean that some other participant may have constructive possession.

One who, although not in actual or physical possession of narcotic drugs, exercises or has the power and the intention to exercise dominion and control of the narcotics, either directly or through another person, is then in constructive possession of the narcotic drug.

Such constructive possession may be found to exist not only where one has the power to control the disposition of the narcotics but also where one may direct or assure or aid in its delivery, or to set or to help set the price, or to determine the quantity to be sold; or to

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guarantee the quality, or to make good shortages of prior deliveries.

In substance, if someone has a working relationship, or is sufficiently associated with those who have the actual physical custody of narcotic drugs so that he is able to cause production of drugs, delivery of drugs for customers, he may also be found to have constructive possession.

And again, in general, if one also has such a meaningful association with someone else who has physical possession of heroin or cocaine, and such a stake in the venture and in its success that he was able to cause or direct or effect its availability for delivery to prospective customers in consummation of a sale, then he may also be said to have constructive possession.

Now your third question may also relate to constrol as evidence of aiding and abetting, and, in any event, if you do not believe that a defendant had control of the sales, this does not mean necessarily that he is not guilty of an offense, because other evidence may lead you to conclude that he is guilty within the instruction given.

Now, Madam Foreman, and members of the jury, I have tried to answer your questions, but sometimes it

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is not easy to phrase answers on matters of law in as simple and understandable form as would be hoped to be most desirable. I have done the best I can, and in these answers, however, you must realize that I have not intended to express any opinion whatever as to what your decision should be.

Now having completed my answers, the members of the jury may retire to the juryroom. Thank you very much.

A JUROR: Thank you.

(Whereupon the jury left the courtroom at 11.10 a.m.)

THE COURT: Now I will hear any exceptions from counsel.

MR. COSTELLO: Your Honor, in the interests of brevity, I do not want to belabor anything, but within the contest of the defendant Novoa's position as asserted from the commencement of this trial, the defendant Joseph Novoa most respectfully takes a general exception to the Court's charge in response to the inquiry.

THE COURT: All right.

MR. STONE: Your Honor, I want to except to your portion of the charge where you answered that the government does not completely rely upon the inference to

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establish knowledge of the legal importation -- that they claim that there is other evidence. That charge will probably be correct as to the defendant Novoa. That aspect of it is not correct as to the defendant Papadakis.

I think the government's allegations, at least their argument about the Spanish newspapers on the packages when they were seized, would apply to Novoa possibly having knowledge of their illegal importation.

The fact that Spanish people were the victims of the seizure, that aspect of the case does not apply to Papadakis.

THE COURT: I understand that argument, Mr. Stone.

MR. GIULIANI: I think that is correct, your Honor. Our evidence, as I remember the testimony, although I am not absolutely certain -- when it was delivered to Papadakis, according to the evidence, in different wrappers. As to the defendant Novoa --

THE COURT: I think Mr. Stone has a point there. I think I had better bring this jury back.

First, Mr. Clerk, will you please mark this last note of the jury as a Court's exhibit.

(Marked Court's Exhibit 10.)

(Whereupon the jury returned to the courtroom at 11.15 a.m.)

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THE COURT: Members of the jury, I am sorry to disturb you but in my answers to one of your questions I inadvertently made a mistake.

When I was answering the third question I talked, you may remember, about possession as it related to the inference as to illegal importation to be drawn, or which may be drawn or may not be drawn by the jury on possession. Then I said, in addition to the inference, that the government relied on evidence of the illegal importation. I had in mind such evidence -- and I cite this only by way of example -- as the fact that the packages found in the apartment in West 19th Street, you might conclude from the evidence were wrapped in South American newspapers, from the fact that there were three passports of South American countries found on the offenders who were arrested and chased to Fort Lee and brought back, and whose arrest led to the going to the West 19th Street apartment.

I should have told you that the government relied on such evidence as against the defendant Novoa, but the government does not rely on such evidence and you should not consider such evidence as against the defendant Papadakis.

Now I have the jury's request that they may have lunch in the juryroom, and we will certainly arrange that

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that be done.

Thank you very much.

(Whereupon the jury retired from the courtroom at 11.20 a.m.)

THE COURT: Yes, Mr. Costello.

MR. COSTELLO: I thought I might save a little time, but, as your Honor knows my general exception, I had certain specific thoughts in mind. The defendant Novoa most respectfully excepts to the Court's definition and explanation of the word "control" as defined by the Court and as applied to the defendant Joseph Novoa.

Further, your Honor --

THE COURT: Incidentally, may I interrupt? That is taken from Webster's Third International Dictionary. I did not invent it.

MR. COSTELLO: I know, your Honor. It had a familiar sound. That is why I say, as it applies to the defendant Novoa, within the context of the facts in this case, and of course the applicable law.

THE COURT: Yes.

MR. COSTELLO: Further, your Honor, the Court's more recent charge of a moment ago, wherein your Honor, in regard to the defendant Novoa, usedthe term "chased" the offenders to Fort Lee. The defendant Novoa most

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respectfully excepts to that connotation therein, within the context of our case.

The defendant --

THE COURT: Well, I certainly did not mean any invidious inference to be drawn from "chased." It was rather extemporaneous. I thought that was a fair descriptive term.

MR. COSTELLO: I am sure that your Honor did not mean to do anything wrong -- I am well aware of that. I just point out what I think are errors unintentionally made.

Perhaps your Honor would like to correct that -- whatever decision your Honor makes in that regard, of course.

May I have a moment, please?

THE COURT: Surely.

(Mr. Costello confers off the record.)

MR. COSTELLO: Further, your Honor, the defendant Novoa most respectfully excepts to that last portion of your Honor's charge wherein your Honor advised the jury that the evidence referred to was to be directed only against Novoa but not as against Papadakis, with all the inferences to be drawn therefrom.

THE COURT: Well, I am persuaded that I made a mistake on that, because there is nothing to show that

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Papadakis knew anything about the South American newspaper wrappings or the three passports. I felt I had to give that instruction.

All right.

Now you took note of the last note that we had from the jury: they want to have lunch in the juryroom, and I am going to ask the marshal to do that.

Mr. Clerk, will you arrange that?

THE CLERK: I have called the marshal's office.

THE COURT: Good, so that they can do it.

THE CLERK: Yes.

THE COURT: Will you please mark this next note of the jury as a Court's exhibit.

(Marked Court's Exhibit 11.)

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(At 2:00 p.m. the following proceedings took place in open court, in the absence of the jury.)

THE COURT: We have two notes.

The first note we got from the jury was not in an envelope, and it says "May we hear the testimony of the witness Boutureira concerning the meeting between himself and Jimmy the Greek for the purpose of discussing quality".

Now will you look at the transcript quickly, please, and see if you can find it.

How many copies of the transcript do we have?

MR.STONE: The only one I had I loaned to Mr. Costello for summation.

MR. COSTELLO: Do I understand your Honor to say there were two notes?

THE COURT: Yes. I thought we would deal with one at a time.

Do you have the transcript?

MR .COSTELLO: No, Mr. Novoas has it, your Honor.

MR. GIULIANI: I am getting another copy of it, your Honor.

THE COURT: We want to identify that portion, and I think would likely include both direct and cross examination of Boutureira "concerning the meeting between

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himself and Jimmy the Greek for the purpose of discussing quality."

(All counsel examined the transcript.)

THE COURT: Mr. Costello, I do not think it makes any real difference, since I have been handed these two notes at the same time, I think probably I ought to read you the second note.

MR. COSTELLO: All right, sir.

THE COURT: Will counsel listen to the reading of the second note -- it could conceivably affect the decision of counsel.

The second note reads -- now remember, these two notes were handed to me at the same time. One of them, what I call the second note, was in an envelope, sealed; the other note was outside the envelope, like this (indicating).

Now I have read you the note which was outside the envelope. The second note --

MR. COSTELLO: In the sealed envelope.

THE COURT: -- in the sealed envelope, says:

"1. May we hear Ramos' testimony regarding his actions after first learning that Boutureira had drugs for sale.

"2. We have a split vote for the defendant

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Novoa on Counts 4 through 10. It is apparent that at least one juror is convinced that he or she will not change his or her vote from guilty to note guilty and conversely at least one juror will not change from not guilty to guilty. We anticipate a hung jury on the remaining charges against Novoa. How long do we need to deliberate before we reach the conclusion that we cannot bring a verdict on the defendant Novoa on Counts IV through X?"

I do not think that changes the order in which I will deal with these matters, but I thought probably it is fairer that counsel hear them both, since I got them both.

MR. COSTELLO: Thank you, your Honor.

THE COURT: Now have you agreed upon the testimony of Bourtureira on this subject?

MR. FELD: We have agreed on the direct.

THE COURT: What about the cross?

MR. STONE: On the cross I asked this question:

"Q Did you ever discuss with this person, that you identified as Jimmy the Greek the quantity of the narcotics, the weight, the price?"

My recollection is that that the word "quantity" was really "quality", because when I referred to weight I used "quantity". I used both. I think that may be

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a typographical error. I referred to quality, quantity and price. If weight refers to quantity, I wouldn't ask the same thing twice.

THE COURT: I agree, but this is not a part of the trial proceedings.

MR. STONE: At least I would ask that that question be asked and answered the way it is, because I think that refers to the meeting, and let the jury determine it. That is page 238. I will be satisfied if it is read just the way it is.

THE COURT: Is there any reason why it should not be read the way it is?

MR. GIULIANI: It can be read the way it is, your Honor.

MR .STONE: We have agreed on page 107.

MR. FELD: Page 107, line 7 through Page 109, line 5, on direct.

MR. STONE: And on cross, page -- your Honor, I asked a lot of questions whether he had anything to drink or not. I do not know whether --

THE COURT: No.

MR. STONE: Then I would say it would be page 238, line 6 to line 18.

THE COURT: Is that agreed upon?

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MR. FELD: Yes.

THE COURT: Mr. Costello, do you agree on this?

MR. COSTELLO: I am sorry. I was making some notes for myself for presentation to your Honor.

I thought since this applied to the defendant Papadakis I wasn't paying any attention. Could I have it read, or maybe you could summarize it for me?

THE COURT: I cannot read the jury's mind. I do not know whether they are just thinking about Papadakis or what.

MR.COSTELLO: May I have the question again, your Honor?

THE COURT: "May we hear the testimony of the witness Boutureira concerning the meeting between himself and Jimmy the Greek for the purpose of discussing quality".

MR. COSTELLO: I have no objections, your Honor, on behalf of Novoa.

THE COURT: All right.

Now then we go to the next topic:

"May we hear Ramos' testimony regarding his actions after first learning that Boutureira had drugs for sale".

I think --

MR. COSTELLO: Is that a question for me or

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just the reading of the note?

THE COURT: That is just the reading of the note, but I think the next thing to do is for counsel to look at the transcript and see if they can agree or what portion shall be read to the jury, and if counsel cannot agree then I will have to arbitrate the differences.

MR. COSTELLO: My position, your Honor, is that the entire transcript, both direct and cross, of Mr. Ramos should be read to the jury.

MR. STONE: I would object. I think they are only asking about Ramos' meeting with Boutureira-- not what Ramos di afterwards. I think that is their question and I think it should be answered as precisely as possible without going into details and not going through 200 pages of direct and cross.

THE COURT: No, it says regarding his "actions after first learning" that Boutureira had drugs for sale.

MR. FELD: Page 324.

THE COURT: Before Ramos testified concerning his knowledge that Boutureira had drugs for sale is definitely out.

After his learning that Boutureira had drugs for sale, what did he do? I do not think it extends to all of his actions. It extends, I would say, unless

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counsel agree to the contrary, I would say between the time that he learned it and his next contact with Boutureira.

MR. GIULIANI: It seems to me, your Honor, it begins on page 324, line 4 to about page 325, line 17.

MR. STONE: That is agreeable, your Honor.

THE COURT: Any cross?

MR.COSTELLO: In behalf of Defendant Novoa, your Honor, all of the cross examination that the defendant Novoa conducted.

MR. STONE: I would object, your Honor.

MR.COSTELLO: I am talking only about the defendant Novoa's cross examination.

MR. STONE: Well, some of your cross examination might have been --

MR. COSTELLO: May I elaborate on that, your Honor?

THE COURT: Please let me do one thing at a time.

You want all the testimony of Ramos read?

MR.COSTELLO: The defendant Nova would, yes, your Honor.

THE COURT: All right.

Let me see the direct examination.

MR. STONE: Then I would object and agree with the government that page 324 to page 325 would cover it --

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at line 18.

THE COURT: Where do you say it starts?

MR. GIULIANI: Page 324, your Honor, line 4.

THE COURT: And where does it go to?

MR. GIULIANI: To page 325, line 17 -- or 18.

THE COURT: To the end of the answer to the question "So, what did you do," at line 17.

MR. GIULIANI: That is right.

THE COURT: All right, let me take a look at it, because Mr. Costello wants all of the direct read, and I am confident that anything before on this first question, none of it should be read, but I do not know about after.

(Court examines.)

THE COURT: All right, I do not think anything else on the direct should be read to the jury, but I will tell the jury that if I have interpreted their question too narrowly they are fully at liberty to ask for any other part of Ramos' testimony to be read.

Now the cross examination.

MR. COSTELLO: Defendant Novoa's position, your Honor, is that all of his cross examination should go in, on the grounds that the interests of justice require it. There are separate and distinct interests in this case, and it was within that context that each attorney cross

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examined with respect to witnesses.

MR. STONE: I would object, your Honor. I think they should be given an answer to their question.

Mr. Costello's cross is short.

MR. COSTELLO: I take it that Mr. Stone has withdrawn his objection to all of my cross being read to the jury.

MR. STONE: Except that I do not think it is in answer to their question. I do think it is applicable either way.

Most of the questions concern a meeting with knowledge of Aguiluz and his plea of guilty, whether he knew Novoa.

MR.COSTELLO: Your Honor, I would repeat that my cross examination on behalf of the defendant Novoa was in his interest and his, Novoa's alone, whereas Mr. Stone ably represented his client and his interest is at to his client alone.

So I submit that my good friend Mr. Stone is not in a position to object to my cross examination, particularly in view of the dichotomy of interests and the request of the jury.

THE COURT: All right, now let me read Mr. Costello's cross examination.

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(The Court examines.)

THE COURT: Mr. Costello, there are certain questions in your cross examination which seem to be related to a portion of the direct examination which will be read. One of them is on page 340, line 14, and the answer.

Do you want to take a look at it?

MR. COSTELLO: (After examining) Yes, your Honor, I have it.

THE COURT: And the other one is on page 347, line 18, and the answer to that.

MR.COSTELLO: (After examining) Yes, I have seen that.

THE COURT: I know you want all of your cross examination read but I do not feel that I can read it all. But would you prefer that I not read any of it or read the material to which I have just referred?

MR. COSTELLO: Did I understand you to say that the option I have is nothing or the two questions that you refer to?

THE COURT: No, it is not a question of option. You are not waiving any of your objections to what I am supposed to do; but if you would prefer that I not read anything rather than to read these two questions and

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answers, I won't have anything read from the cross examination.

MR. COSTELLO: I would like to have my entire cross read.

THE COURT: I understand that, and on that I won't do it.

MR. COSTELLO: You won't do it?

THE COURT: I won't do it.

MR. COSTELLO: All right, you will note my objection.

THE COURT: Of course. All I amsaying is, without waiving your demands or your requests that all of it be read, would you rather that I read these two questions and answers or none at all?

MR.STONE: I would ask for none at all.

THE COURT: I think these are fair in relation to the direct examination.

MR. COSTELLO: Well, I would like your Honor to advise the jury of my request for the entire cross, your Honor's ruling, but that you have ruled that only the questions you have indicated are to be read.

THE COURT: No, I won't do that. I am not going to get into an argument with counsel.

MR. COSTELLO: I do not want the jury to get

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the impression, your Honor, that I have consented to those two questions which I most respectfully submit the Court has arbitrarily picked out.

THE COURT: I am not going to tell the jury that you had anything to do with it -- I will make that very clear.

We willnow read the testimony of Ramos, which I alone have determined is in answer to the jury's question, so I will leave you out of that, reducing it still further.

Now that I am leaving you out, I will still read this material, unless you prefer that I not -- and the record will still show your position. I do not treat anything that you do here as any waiver.

MR.COSTELLO: Thank you. So long as we are clear on that, that I specifically except to your Honor's ruling but on grounds that a grain or gram of bread is even better than a portion of the loaf, I will accept that with the reservations indicated.

THE COURT: And you prefer that I read this material rather than not.

MR. COSTELLO: Under the circumstances I have no choice.

THE COURT: Then the record should show that nothing Mr. Costello has done in answer to my question

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is a waiver of his position in the slightest.

MR. COSTELLO: I thank you, sir.

THE COURT: I just wanted to give you an opportunity to deal with the matter.

All right.

MR. COSTELLO: Before the jury is brought in, will your Honor entertain two applications by the defendant Novoa, to propound these questions to the jury which might be phrased as follows: Would you ask the jury that if they had received defendant Detective Joseph Novoa's notebook in evidence, referred to earlier in the trial,, par icularly of the events surrounding Detective Novoa's activities on the day the 100 kilos were found in the apartment on West 19th Street; and the second branch of the application, your Honor -- I also learned that Detective Novoa had in fact arrested and testified and convicted Mr. Nieves in the State Court, whom they acquitted under Count 8 of the interrogatories, would they withdraw their finding that the defendant Joseph Novoa was guilty under Count 1 of the indictment?

THE COURT: Although I will entertain the application, Mr. Costello, I feel constrained to deny it.

MR. COSTELLO: Would you note my exception, sir?

THE COURT:Of course.

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MR. COSTELLO: May I have a moment, your Honor?

THE COURT: I beg your pardon?

MR. COSTELLO: May I have just a moment, sir?

THE COURT: Yes.

(Mr. Costello confers off the record.)

MR. GIULIANI: Your Honor, with regard to Mr. Ramos' testimony that we are going to read, there is a portion of the cross examination by Mr. Stone which relates directly to what we are going to read as part of the direct examination.

THE COURT: Mr. Stone did not want it read.

MR. STONE: No, I said I did not want Mr. Costello's read.

THE COURT: I thought I had been told what Mr. Stone and the government had agreed on.

What are we doing now -- are we opening the matter?

MR. STONE: We agreed on Boutureira completely, your Honor.

THE COURT: Well, I will have to go back and start at the beginning.

(The Court examines.)

MR. STONE: I would ask that it be read, your Honor --

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THE COURT: Wait, please.

Let us start again at the beginning.

On direct examination of Ramos please state to the reporter on the record the portion of the direct which the government and counsel for Papadakis have agreed is an answer to the question.

MR. GIULIANI: Page 324, line 4 to page 325, line 17 or 18 -- the question ending on line 18.

THE COURT: Mr. Stone?

MR. STONE: That is agreeable on the direct, your Honor.

THE COURT: All right. I realize that Mr. Costello wanted it all read but I overruled his request.

Now on cross examination of Mr. Costello, I directed the reporter to read lines 14 through 17 on page 340; and lines 18 through 21 on page 347, subject to the objections of and the colloquy with Mr. Costello just on the record.

All right.

Now the cross examination of Ramos by Mr. Stone, please state on the record to what Mr. Stone and the Government have agreed.

MR. GIULIANI: Page 373, line 19 through page 374 line 6.

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THE COURT: Mr. Stone?

MR. STONE: That is agreeable.

MR. GIULIANI: And also, your Honor, there is another portion on cross, page 379, line 10 through line 19.

MR. STONE: That is not agreed on, your Honor. I would object to that portion.

THE COURT: Whether it should be more or less you mean that should be read?

MR. STONE: I think none of that should be read. I do not think that is in answer to their question.

MR. GIULIANI: That is what they are asking.

THE COURT: (After examining) I overrule Mr. Stone's objection. Line 10 through 19 on page 379 will be read.

All right, Mr. Costello, do you have any position on this part of the matter?

MR. COSTELLO: No, your Honor. May I approach the bench, your Honor, with counsel at the side bar?

THE COURT: All right.

(At the side bar.)

MR. COSTELLO: Your Honor, I am taking this on side bar, and depending upon your Honor's ruling rather than entertaining it in open court.

Defendant Joseph Novoa most respectfully moves

for a mistrial on Counts 6 through 10 of the indictment, predicated upon what he believes to be confusion in the jury, for all the reasons herein set forth to the facts, the law and the charge.

The defendant Novoa further requests your Honor to inquire of the jury the following question:

If the jury had received Detective Joseph Novoa's notebook in evidence as to his activity hours and time on April 15, 1970 relating to the West Side seizure of 100 kilos; and, 2, had also learned that Detective Joseph Novoa had in fact arrested, testified and his testimony resulted in the conviction of the co-defendant Nieves in the State Court whom they acquitted under Count 8 of the indictment, would their verdict be different from that rendered to the Court yesterday afternoon?

THE COURT: Well, I entertain the application but I deny it.

MR. COSTELLO: Would you note our exception.

MR. STONE: Your Honor, I will join in the mistrial application on one count.

THE COURT: Denied.

MR. COSTELLO: One is for a mistrial on Counts 6 through 10 -- that was the first application.

The second application referred to the notebook,

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and the reference to Nieves and the State Court as a basis for changing the verdict.

In the event that they fail to do that, that your Honor declare a mistrial as to all counts so far.

THE COURT: Yes. Both applications are denied.

MR. COSTELLO: Note our exception.

Thank you, sir.

(In open court.)

THE COURT: Now, in answer to the second question of what I dealt with as the second note about a split vote of the jury, I propose to give my version of the Allen charge.

Mr. Clerk, would you ask the marshall to bring in the jury.

(Jury returned to the courtroom at 2:40 p.m.)

THE COURT: Madam Foreman and ladies and gentlemen of the jury, we have two notes from the jury. I will now deal with the note from the jury as given to me outside an envelope. It may not be in fact the first note written by the jury because the two notes came to me at the same time.

The note without an envelope reads:

"May we hear the testimony of the witness Boutureira concerning the meeting between himself and

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Jimmy the Greek for the purpose of discussing quality".

We will now the reporter to read the testimony of Boutureira which I alone have determined is the evidence in response to this question.

Mr. Reporter.

(Read was read by the reporter.)

(The foreman raises her hand.)

THE COURT: You think you have heard enough of the testimony?

THE FOREMAN: Yes.

MR. STONE: I think there was some on cross.

THE COURT: No. The jury has indicated that they heard enough. It is the pleasure of the jury, what they want, and we won't read any more.

The next note has two questions. The first is this: "May we hear Ramos' testimony regarding his actions after first learning that Boutureira had drugs for sale".

We will now have read the testimony of Ramos, which I alone have determined is an answer to the jury's quetion.

Mr. Reporter, if you please.

(Record read by the reporter.)

THE COURT: Now members of the jury, in determining what parts of the direct examination of Ramos should be

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read, in answer to the jury's question, I have interpreted the jury's question as calling for what Ramos did immediately after learning that Boutureira had drugs for sale.

Of course everything that he did thereafter was after he had learned it, but I have restricted it to what he did immediately thereafter.

Of course if I have too narrowly restricted the question, the jury is free to ask for more of the testimony of Ramos to be read.

Now the second question of the jury in this note reads as follows:

"We have a split vote on the defendant Novoa on Counts 4 through 10. It is apparent that at least one juror is convinced that he or she will not change his or her vote from guilty to not guilty and conversely at least one juror will not change from not guilty to guilty. We anticipate a hung jury on the remaining charges against Novoa. How long do we need to deliberate before we reach the conclusion that we cannot bring a verdict on the defendant Novoa on Counts IV through X".

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Now from this note it is apparent that after some time and conscientious deliberation you have not been able to reach a verdict as to certain counts against the defendant Novoa, and with that in mind I want to suggest a few thoughts which may be helpful to you.

This is an important case, both to the government and to Mr. Novoa. The trial that is on the counts against Mr. Novoa -- obviously this is an important case to the government and to Mr. Papadakis also, but this question deals only with the defendant Novoa.

The trial has involved the time, effort, and money of both the defendant Novoa and the government. If you should fail to agree on a verdict as to these counts, the case as to these counts is left open and undecided. There appears no reason to believe that at another trial the case can be tried again by either side, better or more exhaustively than it has been tried before you. Any future jury must be selected in the same manner and from the same source as you have been chosen. So, their appears no reason to believe that the case would ever be submitted to 12 jurors more conscientious, more impartial, or more competent to decide it, or clearer evidence to be presented on either side.

As stated in my earlier instructions, you should

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not surrender your honest convictions as to the weight or the effect of evidence solely because you are outvoted by other jurors, or for the mere purpose of returning a verdict.

However, it is your duty as jurors to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but you should do so only after a consideration of the evidence in the case with your fellow jurors.

As I emphasized in my instructions, in the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you find that your opinion is erroneous.

You know, in order to bring 12 minds to a unanimous result, you must examine the questions submitted to you with candor and frankness, and with proper deference to the views and opinions of each other; that is to say, in consulting together, each of you should pay due attention and respect to the views of the others, and listen to each other's arguments with a disposition to re-examine your own views.

If much the greater number of you are for a conviction, each dissenting juror ought to consider

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whether a doubt in his or her own mind is a reasonable one, since it makes no effective impression upon the minds of so many equally honest, equally conscientious fellow jurors, who bear the same responsibility, serve under the same oath, and have heard the same evidence with, we may assume, the same attention and an equal desire to arrive at the truth.

On the other hand, if a majority or even a lesser number of you are for acquittal, other jurors ought to seriously ask themselves again, and most thoughtfully, whether they do not have reason to doubt the correctness of a judgment, which is not concurred in by many of their fellow jurors, and whether they should not distrust the weight and sufficiency of evidence, which fails to convince the minds of several of their fellows beyond a reasonable doubt.

While, undoubtedly, the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves.

Each juror should listen with deference to the arguments of his fellow jurors and with a distrust of his

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or her own judgment, especially if he or she finds a large majority of the jury taking a different view of the case from his or her own. It would not be right for each juror to go to the jury room with a blind determination that the verdict shall represent his or her opinion of the case at that moment; or, that he or she should close his or her ears to the arguments of those who are equally honest and intelligent.

Remember, finally -- and I have tried to give you these thoughts which ae the distillation of what has come to be regarded as a certain amount of wisdom built over the ages; I have tried to give you these thoughts as an aid to yourselves, but, remember, no juror is expected to yield a conscientious conviction he or she may have as to the weight or effect of evidence.

If any juror still retains a conscientious view that differs from that of other jurors, he or she should not yield that judgment simply because he or she may be outnumbered or outweighed. But remember, finally, after full deliberation and consideration of all the evidence in the case, it is your duty to agree upon a verdict, if you can do so without violating your individual judgment and conscience.

Now you have asked really a specific question.

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You asked "How long do we need to deliberate before we reach the conclusion that we cannot bring a verdict on the defendant Novoa on Counts IV through X"?

I could answer that more specifically than some other questions. You do not need to deliberate for any period of time past such a conclusion, if, after you have given careful consideration to the thoughts which I have just expressed in an attempt to aid you in reaching a verdict, but if after carefully considering those thoughts you conclude at any time that you cannot reach a verdict, send a note to me, advising me of this, and I will discharge this jury.

I am sorry, Madam Foreman, I seem to have made another mistake. Apparently the reporter did not read the cross examination of Mr. Ramos in answer to the first question of your note which I treated secondly.

Mr. Reporter, would you do that, please.

MR. STONE: I do not think the cross of Boutureira was read either.

THE COURT: No, but the foreman indicated, and I questioned the jurors, and they do not want to hear any more, so I say in this regard we are servants of the jury.

THE FOREMAN: We would like to hear the cross of Bouturcira.

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THE COURT: Beg pardon?

THE FOREMAN: We do want to hear Boutureira's cross.

THE COURT: Boutureira's cross which I determined should read in answer to your question.

All right, let us do that first, then we will take up the cross of Ramos which I failed to let the jury hear.

Let us do Boutureira first.

(Record read by the reporter.)

THE COURT: Thank you, Madam Foreman and ladies and gentlemen of the jury, you may retire.

(Whereupon the jury retired at 3:00 p.m.)

THE COURT: Mr. Clerk, will you please mark these next two notes of the jury as court's exhibits.

(Two notes marked Court's Exhibits 12 and 13 respectively.)

MR. COSTELLO: Would your Honor have me state my exceptions at this point or do you have other business to take care of?

THE COURT: No, this has priority.

MR. COSTELLO: All right, your Honor. I renew my motions for a mistrial with regard to Counts 4 through 10 inclusive of the indictment.

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I renew my application to the Court to inquire of the jury if the jury received Detective Novoa's notebook in evidence -- the memorandum notebook in evidence which the government has, and, No. 2, if the jury leanred that defendant Detective Joseph Novoa had in fact arrested and convicted Mr. Nieves, the co-defendant in the indictment, in the Supreme Court of the State of New York, whom they acquitted under Count 8 of your Honor's purported interrogatories, would they in fact withdrew their findings relating to the guilt of Mr. Novoa under Count 1 of your Honor's memorandum to the jury on the verdict. I take it that your Honor has not changed his position on that.

THE COURT: No.

MR. COSTELLO: You will note my exception.

I also object and renew my objection, your Honor, to the restrictions which the Court has placed on the reading of the testimony, particularly in view of the note submitted by the jury to the Court, marked specifically Court's Exhibits 12 and 13.

Another point, your Honor, this does not appear in the record but it was my impression from looking at the jury that they were disappointed that they did not have a reading of the entire testimony of the cross. That is

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subjective, and it is my opinion, and I just state it.

THE COURT: Well, I thought I gave him a chance to hear anything else.

MR. COSTELLO: Well, as I remember it, your Honor, consistent with the statement that you made to me, that you indicated to the jury, I think your Honor used the phrase "arbitrarily restricted" or "delineated" that cross which was going to be given to them.

THE COURT: I think my expression was that I alone had determined it, in answer to the question.

MR. COSTELLO: I will accept that.

THE COURT: And it was in order to eliminate any question that counsel had agreed on.

MR. COSTELLO: I also specifically except most respectfully to your Honor's restriction of Boutureira's cross. As I interpreted the notes submitted to the Court, your Honor, I most respectfully submit that I think the jury wanted the entire cross examination of Mr. Boutureira.

And further, your Honor, I specifically except to that portion of your Honor's restriction on cross examination where Defendant Novoa's cross examination of Ramos was not read to the jury, wherein Ramos admitted under cross examination that he had never had any dealings with Mr.

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Novoa, and he did not know Novoa.

I emphasize that specifically because your Honor in taking the plea of Mr. Ramos asked him if he knew -- if he had any dealings with Mr. Novoa or if he knew Mr. Novoa, and in my cross examination I referred specifically to your Honor's very pointed questions as an experienced and well known trial lawyer whenyou were at the bar, and I incorporated that in my cross.

THE COURT: All right.

MR. COSTELLO: Note my exception.

THE COURT: Yes.

Does anybody else have any exception to what I have done this afternoon?

(No response.)

THE COURT: All right, then we will have to stand in recess while I deal with some of the matters.

(At 4 p.m. the following proceedings occurred in the courtroom.)

THE COURT: A note from the jury reads:

"May we hear Ramos' direct and cross testimony about the meeting between Boutureira and Jimmy the Greek when they discussed the quality of the second kilo sale.

"2. May we hear all of the testimony of the defendant Novoa."

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Now, on the first, will counsel please get together about the testimony called for -- this is Ramos' testimony between Boutureira and Jimmy the Greek when they discussed the quality of the second kilo sale.

MR. STONE: And they asked for the cross, too.

THE COURT: This is the quality of the second sale.

MR.GIULIANI: This is Ramos' testimony they want.

THE COURT: Would it help you if they had the note before you?

MR. GIULIANI: It would, your Honor.

THE COURT: All right.

(The Court hands to counsel who examines.)

THE COURT: Let us go back on the record. I suppose I will have to read it all myself.

MR. GIULIANI: Your Honor, the position of the government is, in response to this question, that the following would be relevant: Page 330 line 4 through page 331 line 10.

MR. STONE: And I would object to that, your Honor.

THE COURT: Allright, what do you say?

MR. STONE: I think a direct answer should begin with page 331 line 4 and end on page 331 line 10.

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They are only asking for Ramos' direct --

THE COURT: Is that all?

MR. STONE: That is all I think is relevant on direct.

THE COURT: All right. Then what is there on cross.

MR. STONE: I think that 373 should be reread, line 24 to page 374, line 6.

MR. GIULIANI: The government objects to reading that, your Honor, because it relates to the first time that Ramos met with Jimmy the Greek and not to the discussion that the jury is asking about.

THE COURT: All right, anything else, Mr. Stone, on the cross?

MR.STONE: I say no, but, your Honor --

MR. GIULIANI: There is one other thing on cross that I think should be read, because it relates directly to this question -- page 384, line 23 through page 385 line 4.

MR.STONE: May I be heard on that, your Honor?

THE COURT: No.

May I see the transcript.

(Handed to the Courtwho examines.)

THE COURT: Mr. Stone, you say page 373 line 4?

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MR. STONE: Yes, your Honor.

THE COURT: Mr. Costello, do you have a position on this matter on the Ramos testimony?

MR. COSTELLO: What is the question, your Honor, with regard to Ramos' testimony?

THE COURT: "May we hear Ramos' direct and cross testimony about the meeting between Boutureira and Jimmy the Greek when they discussed the quality of the second kilo sale"?

MR. COSTELLO: I thir the jury should get what they are asking for in that regard.

THE COURT: Well, you heard what counsel are asking me.

MR. COSTELLO: No, I mean I am answering your Honor's question. I don't know how else to freeze it, sir.

THE COURT: All right. Then, Mr. Reporter, you will read Ramos' testimony from page 328 line 21 through page 338 line 10; and page 384 line 23 through page 385 line 4.

Mr. Reporter, how long do you think it would take -- there is not much of Ramos but to read all of the testimony of Defendant Novoa?

THE REPORTER: Your Honor, I estimate about

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four to five hours. There are over 180 pages I am informed by the clerk.

THE COURT: All right. Then we will read until 6:15 and we will stop then until tomorrow morning.

MR.STONE: Your Honor, may I be heard on your instructions?

THE COURT: Yes.

MR.STONE: It is my belief that a careful reading of the testimony on page 384 and page 385 only refers to a conversation with Ramos and Jimmy the Greek, and does not refer to any conversations when Boutureira was present. This is simply the testimony of Ramos as to what he said to Jimmy the Greek. The jury's question was an inquiry as to the meaning with Boutureira and Jimmy the Greek concerning prices and quality -- not to reiterate what Jimmy the Greek said.

MR. GIULIANI: Your Honor, I will withdraw our request to have that read. Just read the direct.

THE COURT: All right, I think you have a point there, Mr. Stone.

All right, Mr. Clerk --

MR.COSTELLO: Just one other thing, your Honor.

If we find out that the reporter's estimate

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as to the reading time is concerned is shorter, may we continue on past that? if I understand him correctly, he indicates four to five hours.

THE COURT: Yes.

MR. COSTELLO: Could we continue on and have the jury have it all tonight?

THE COURT: Well, if we could finish it by 6:15, yes.

MR. COSTELLO: Yes, sir.

THE COURT: All right, will you get the jury, please.

MR. STONE: Your Honor, do you want us to stay after they start reading Novoa? As to Papadakis, I do not know whether that will concern him.

THE COURT: Well, if you and Mr. Papadakis want to be excused, and he elects voluntarily to have his right to be present at all phases of the trial, including this one, I certainly will excuse him.

Do you want to stay?

DEFENDANT PAPADAKIS: Yes, sir.

THE COURT: All right.

(Whereupon, the jury returned to the courtroom at 4:25 p.m.)

THE COURT: Now Madam Foreman, ladies and gentle-

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men of the jury, we have your last note.

The first question is: "May we hear Ramos' direct and cross testimony about the meetings between Boutureira and Jimmy the Greek when they discussed the quality of the second kilo sale".

I have determined the portions of Ramos' direct and cross testimony, which is in answer to the question; but in order to make the testimony mean something, I have added a few questions and answers at the beginning by way of introduction, because technically the first question, which would be literally in response to your question, reads "What happened next" -- and unless you knew what preceded that you wouldn't be able to place it in context.

So you understand that there are a few preliminary questions by way of introduction, and the rest of it we have found is in answer to your question.

All right, Mr. Reporter.

(Record read by the reporter.)

THE COURT: Now that is the answer to the jury's first question.

Then the second question the jury asks:

"may we hear all of the testimony of the defendant Novoa" -- and the answer is: You certainly may.

Now I think that it will take several hours to

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read that, and so I suggest at 6:15 -- we have had a long day, we will stop, and then I will give the jury a few minutes to consider whether you prefer to come in tomorrow morning or Monday morning; they you can come out and tell me.

I do not think we ought to stay here for many reasons past 6:15. But we will read all of it to you.

And, Mr. Reporter, will you and Mr. Clerk do that. Mr. Clerk, will you take the part of the witness?

THE CLERK: Yes.

THE COURT: You undersand that our good clerk will read the answers and the reporter will read the questions to Mr. Novoa.

(Record started read at page 1103 line 9 and continued to page 1202 line 21.)

THE COURT: I think it is time for us to take a break.

Now Madam Foreman and ladies and gentlemen of the jury, we appreciate the diligent and faithful performance by you of your duties, and in partial recognition, at least, of this we want to set our schedule to meet the convenience of the jury.

If the jury prefers we can meet tomorrow, Saturday, at 9:30 or 10 o'clock. I will be here anyway

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so don't worry about that. But if meeting tomorrow would be inconvenient for any substantial number of jurors, and the jury would prefer to meet on Monday morning we will do it.

It is up to the jury.

Now, Madam Foreman, do you think the jury can express its preference in this matter, whether tomorrow or Monday without leaving the courtroom, would you like to confer in the jury room?

THE FOREMAN: No, they all prefer Monday morning.

THE COURT: All prefer Monday.

All right, can we meet at 9:30 on Monday morning?

(Jurors confer.)

THE FOREMAN: We would like to talk it over.

THE COURT: You would like to talk it over.

If, for instance, you are evenly divided, that you would rather go over until Monday or something of that sort, if any substantial number of the jurors do not want to come in tomorrow I won't ask you to do it, but you go out and talk it over and see what decision you can come to.

(Jury left the courtroom at 6:10 p.m.)

THE COURT: Does anybody want to say anything about our procedure so far?

(No response.)

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THE COURT: All right, Mr. Clerk, would you be good enough to mark the last note from the jury as the next Court's exhibit.

(Court's Exhibit 14 was marked.)

(The jury returned to the courtroom at 6:25 p.m.)

THE COURT: Members of the jury, I was about to ask you to come back to the courtroom because my own judgment is that if you are not all agreed on coming in tomorrow, I want to exercise my function and exercise my discretion and put the matter over to Monday. I realize that may disappoint some of you, but I hope you understand that I do it because in the absence of agreement on tomorrow I think it far better, since we have had a long week, the court personnel and the reporters have had a long week -- I do not say that so far as I am personally concerned. As I indicated, I am coming in tomorrow, but I will ask you to come in Monday at 9:30 or 10 o'clock -- which do you prefer?

THE FOREMAN: 9:30.

THE COURT: All right. Meet in the jury room here at 9:30, but don't be surprised when I tell you that we may transfer you to another jury room. I hope that it will be just as nice or just not as nice as your present one -- but

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it will be about the same. Every two months we change courtrooms between the judges, and I am going to another courtroom Monday morning. So that you won't have to go through the diffiuclty of finding where the jury room is for that other courtroom, come to this jury room and we will have the marshal take you to the other jury room off my courtroom.

Thank you very much for your conscientious dedication to your duties, and we will join each other on Monday morning -- or you will join each other Monday morning to deliberate, and if you need me I will be available.

You may retire; have a restful weekend.

THE CLERK: The jury is excused until 9:30 Monday morning.

(Adjourned to June 3, 1974, at 9:30 a.m.)

* * * * *

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up to date, Mr. DeKalb thinks it can be done reasonably, within not more than 10 days, so I have put the sentence down for Mr. Papadakis as June 14 at 2:30 in the afternoon in this room.

MR. GIULIANI: Fine, your Honor.

THE COURT: All right.

MR. STONE: May I reserve any additional motions until that date?

THE COURT: Yes, you may.

All right, we will continue to await the pleasure of the jury on the case at trial.

(At 12:30 p.m. the following proceedings took place.)

(Defendant Novoa not present.)

THE COURT: Mr. Costello, I am told that the jury has a verdict.

Now I propose to take the verdict in the absence of Mr. Novoa because, I think you will agree with me, Mr. Novoa is absent at his own request and has been excused for the reasons that we have already put on the record, and that therefore he has waived his right to be present when the verdict is rendered.

MR. COSTELLO: That is correct, your Honor.

THE COURT: All right, thank you.

I also have been handed an envelope which contains a memorandum from the jury on the verdict, which was given to the foreman, so that we can have that marked afterwards.

Mr. Clerk, will you bring the jury in?

(Jury returned at 12:35 p.m.)

THE COURT: Madam Foreman, you have returned a memorandum. Do you need it in rendering your verdict?

THE FOREMAN: No.

THE COURT: All right, Mr. Clerk.

THE CLERK: Members of the jury, please answer to your presence as your name is called.

(Poll of jurors called.)

THE CLERK: Madam Foreman, has the jury agreed upon a verdict?

THE FOREMAN: Yes.

THE COURT: How do you find as to the defendant Novoa on count 4?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to the defendant Novoa on count 5?

THE FOREMAN: Guilty.

THE CLERK: As to the defendant Novoa on count 6?

THE FOREMAN: Guilty.

THE CLERK: As to the defendant Novoa on count 7?

THE FOREMAN: Guilty.

THE CLERK: As to the defendant Novoa on count 8?

THE FOREMAN: Guilty.

THE CLERK: As to the defendant Novoa on count 9?

THE FOREMAN: Guilty.

THE CLERK: As to the defendant Novoa on count 10?

THE FOREMAN: Guilty.

THE COURT: Mr. Clerk, will you now poll the jury, please.

THE CLERK: Members of the jury, you say you find the defendant Novoa guilty on count 4, guilty on count 5, guilty on count 6, guilty on count 7, guilty on count 8, guilty on count 9 and guilty on count 10.

Is that your verdict --

(Whereupon each juror was polled and answered in the affirmative.)

THE COURT: Now, Madam Foreman and ladies and gentlemen of the jury, before dismissing you I would like to say at least two things which I always tell juries:

The first is that I never make any comment upon the verdict of the jury. Therefore, the fact that I say nothing about your verdict is not to be taken as meaning anything. It is just my constant, unvarying practice.

I never comment on the verdict of a jury.

Second, I always tell jurors that under our system I think that what takes place in the juryroom is private, secret and confidential to jurors. I have no idea that anyone will ever ask you about anything that may have transpired in the juryroom during your deliberations, and I think it is probably beyond my authority to order that you not ever disclose to anybody what happened in the juryroom. This is a country of free speech. On the other hand, I suggest very strongly that if anybody ever inquires of you as to what happened in the juryroom, you decline to give any information, on the principle which I emphasize that a jury's deliberations are about as sacred a thing as I can think of, and it is private and confidential among the jurors. As I say, I have no idea that anybody would ever make such a request of you but if by any chance it should be done, if you wish you can cite my recommendation to you.

Now, Mr. Clerk, what should the jurors do?

THE CLERK: They are excused, and I will give them their certificates in the juryroom.

THE COURT: All right. Before finally excusing you, I want to say, Mrs. Hernandez and ladies and gentlemen of the jury, that I have never worked with a more con-

* * * * *

JUDGMENT OF CONVICTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

V. No. 74 Cr. 229

JOSEPH NOVOA

On this 2nd day of July, 1974 came the attorney for the government and the defendant appeared in person and by Barry Ivan Slotnick, Esq.

IT IS ADJUDGED that the defendant upon his plea of not guilty, and a finding of guilty by a jury, has been convicted of the offense of unlawfully, wilfully and knowingly did receive, conceal, buy and sell and facilitate the transportation, concealment, purchase and sale of narcotic drugs, to wit, herion hydrochloride and cocaine hydrochloride, and conspiracy so to do. (Title 18, U.S. Code, Section 371; Title 21, U.S. Code, Sections 173 & 174; Title 18, U.S. Code, Section 2.) as charged in counts 1, 4, 5, 6, 7, 8, 9, & 10, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

JUDGMENT OF CONVICTION

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on count 1. TEN (10) YEARS on each of counts 4 thru 10, to run concurrently with each other. Sentence imposed on count 1, to run concurrently with sentence imposed on counts 4 thru 10.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ Inzer B. Wyatt
United States District Judge

s/ Raymond F. Burghardt
Clerk

FILED JULY 2, 1974
U.S. DISTRICT COURT
S.D. OF N.Y.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

JOSEPH NOVOA,

Defendant.

S I R :

PLEASE TAKE NOTICE that the defendant herein appeals to the Circuit Court of Appeals from the judgment of conviction rendered against him in this Court on the 2nd day of July, 1974, as of all parts thereof.

Dated: New York, New York
July 2, 1974.

Yours, etc.

ARNOLD E. WALLACH
Attorney for Defendant
253 Broadway
New York, New York

TO: HONORABLE PAUL CURRAN
United States Attorney

Defendant's Address:
1738 East 33rd Street
Brooklyn, New York

COPY RECEIVED
AUG 21 1974
PAUL J. CURRAN
U. S. ATTORNEY
SO. DIST. OF N.Y.